

“बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी. 2-22-छत्तीसगढ़ गजट/38 सि. से. भिलाई, दिनांक 30-5-2001.”



पंजीयन क्रमांक  
“छत्तीसगढ़/दुर्ग/09/2013-2015.”

# छत्तीसगढ़ राजपत्र

## प्राधिकार से प्रकाशित

क्रमांक 30 ]

रायपुर, शुक्रवार, दिनांक 29 जुलाई 2022—श्रावण 7, शक 1944

### विषय—सूची

भाग 1.—(1) राज्य शासन के आदेश, (2) विभाग प्रमुखों के आदेश, (3) उच्च न्यायालय के आदेश और अधिसूचनाएं, (4) राज्य शासन के संकल्प, (5) भारत शासन के आदेश और अधिसूचनाएं, (6) निर्वाचन आयोग, भारत की अधिसूचनाएं, (7) लोक-भाषा परिशिष्ट.

भाग 2.—स्थानीय निकाय की अधिसूचनाएं.

भाग 3.—(1) विज्ञापन और विविध सूचनाएं, (2) सांख्यिकीय सूचनाएं.

भाग 4.—(क) (1) छत्तीसगढ़ विधेयक, (2) प्रवर समिति के प्रतिवेदन, (3) संसद में पुरःस्थापित विधेयक, (ख) (1) अध्यादेश, (2) छत्तीसगढ़ अधिनियम, (3) संसद् के अधिनियम, (ग) (1) प्रारूप नियम, (2) अंतिम नियम.

## भाग १

### राज्य शासन के आदेश

#### सामान्य प्रशासन विभाग

मंत्रालय, महानदी भवन, नवा रायपुर, अटल नगर

नवा रायपुर, अटल नगर दिनांक 24 जून 2022

क्रमांक ई 1-03/2022/एक-2.—राज्य शासन एतद्वारा श्री ईमिल लकड़ा, भा.प्र.से. (2003), सचिव, लोक आयोग, रायपुर को अस्थायी रूप से आगामी आदेश पर्यन्त सचिव, छत्तीसगढ़ शासन के पद पर पदस्थ करता है.

2. श्री सुधाकर खलखो, भा.प्र.से. (2012), संचालक, ग्रामोद्योग तथा अतिरिक्त प्रभार प्रबंध संचालक, छ.ग. हस्तशिल्प विकास बोर्ड एवं प्रबंध संचालक, छ.ग. माटीकला बोर्ड, प्रबंध संचालक, छ.ग. हाथकरघा विकास एवं विपणन संघ मर्यादित, रायपुर को अस्थायी रूप से आगामी आदेश पर्यन्त सचिव, लोक आयोग, रायपुर के पद पर पदस्थ करता है.

श्री सुधाकर खलखो द्वारा कार्यभार ग्रहण करने के दिनांक से राज्य शासन, भारतीय प्रशासनिक सेवा (वेतन) नियम, 2016 के नियम-12 के तहत सचिव, लोक आयोग के असंवर्गीय पद को प्रतिष्ठा एवं जिम्मेदारी में भारतीय प्रशासनिक सेवा के कनिष्ठ प्रशासनिक वेतनमान के संवर्गीय पद के समकक्ष घोषित करता है।

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,  
**कमलप्रीत सिंह, सचिव.**

नवा रायपुर, अटल नगर दिनांक 4 जुलाई 2022

क्रमांक एफ 5-2/2022/एक (1).—राज्य शासन एतद्वारा माननीय न्यायमूर्ति श्री संजय अग्रवाल, न्यायाधिपति, छत्तीसगढ़ उच्च न्यायालय बिलासपुर को दिनांक 24 फरवरी, 2022 से 04 मार्च, 2022 तक (09 दिन) एवं दिनांक 08 मार्च, 2022 से 17 मार्च, 2022 तक (10 दिन) का पूर्ण वेतन भत्ता सहित लघुकृत अवकाश की कार्योत्तर स्वीकृति प्रदान करता है।

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,  
**संजय अग्रवाल, संयुक्त सचिव.**

नवा रायपुर, अटल नगर दिनांक 21 जून 2022

क्रमांक बी-1-2/2022/एक/4.—राज्य शासन एतद्वारा निम्नलिखित अधीक्षक/तहसीलदारों को राज्य प्रशासनिक सेवा के कनिष्ठ श्रेणी वेतनमान में डिप्टी कलेक्टर के पद पर वेतन मैट्रिक्स लेवल 12 में पदोन्नत करते हुए, उन्हें कार्यभार ग्रहण करने के दिनांक से अस्थाई रूप से आगामी आदेश तक नीचे दर्शित तालिका में उनके नाम के सम्मुख कॉलम (4) में दर्शाये अनुसार पदस्थ करता है :—

क्र. (1)	अधिकारी का नाम (2)	वर्तमान पदस्थापना (3)	नवीन पदस्थापना (4)
1.	श्री शशिकुमार चौधरी	तहसीलदार, गौरेला-पेण्ड्रा-मरवाही	डिप्टी कलेक्टर, बलरामपुर रामानुजगंज
2.	श्री रमेश कुमार मोर	तहसीलदार, बिलासपुर	डिप्टी कलेक्टर, रायगढ़
3.	श्री रामरतन प्रसाद दुबे	तहसीलदार, बालोद	डिप्टी कलेक्टर, बलौदाबाजार-भाटापारा
4.	श्री मायानंद चंद्रा	तहसीलदार, मुंगेली	डिप्टी कलेक्टर, बस्तर
5.	श्री जगतराम सतरंज	तहसीलदार, रायगढ़	डिप्टी कलेक्टर, सरगुजा
6.	श्री सुरेश कुमार साहू	तहसीलदार, कोरबा	डिप्टी कलेक्टर, बालोद
7.	रामकुमार सोनकर	तहसीलदार, दुर्ग	डिप्टी कलेक्टर, बेमेतरा
8.	श्री मनोज कुमार खाण्डे	तहसीलदार, बिलासपुर	डिप्टी कलेक्टर, कोरबा

2. उपरोक्त पदोन्नतियां दो वर्ष की स्थानापन्न अवधि के लिए होगी तथा पदोन्नत अधिकारियों की सेवाएं छत्तीसगढ़ राज्य प्रशासनिक सेवा (वर्गीकरण, भर्ती तथा सेवा की शर्तें) नियम, 1975 के प्रावधानों के अंतर्गत शासित होगी।

3. उक्त आदेश माननीय छत्तीसगढ़ उच्च न्यायालय, बिलासपुर में दायर याचिका WP (PIL) NO. 91/2019, S. Santosh Kumar Vs. State of Chhattisgarh & Other's में पारित अंतिम आदेश के अध्याधीन होगी।

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,  
**क्लेमेन्टीना लकड़ा, अवर सचिव.**

**राजस्व विभाग**

कार्यालय, कलेक्टर, जिला रायगढ़, छत्तीसगढ़ एवं पदेन उप-सचिव, छत्तीसगढ़ शासन, राजस्व एवं  
आपदा प्रबंधन विभाग

रायगढ़, दिनांक 30 जून 2022

भू-अर्जन (पूरक) प्र. क्र. 07/अ-82/2019-20.— भू-अर्जन प्रकरण में महाप्रबंधक एनटीपीसी तलाईपाली कोल माईनिंग परियोजना घरघोड़ा द्वारा ग्राम-बड़माल, प.ह.नं.-30, तहसील पुसौर जिला-रायगढ़, की निजी भूमि कुल रकबा 4.535 हे. एनटीपीसी तलाईपाली कोल माईनिंग परियोजना के रेल लाईन हेतु भू-अर्जन के प्रस्तुत प्रस्ताव के आधार पर भू-अर्जन अधिनियम के तहत धारा-11(1) की अधिसूचना तथा धारा-19 की अधिसूचना का प्रकाशन प्रावधानों के अनुसार किया जाकर छत्तीसगढ़ राजपत्र में क्रमशः दिनांक 04-06-2021 तथा दिनांक 01-10-2021 को कराया गया है.

चूंकि अब महाप्रबंधक एनटीपीसी तलाईपाली कोल माईनिंग परियोजना घरघोड़ा के द्वारा भू-अर्जन की कार्यवाही हेतु सम्मिलित उक्त भूमि से कुल खसरा 07 में से कुल रकबा 0.392 हे. भूमि रेल लाईन में प्रभावित नहीं होने के फलस्वरूप भू-अर्जन की कार्यवाही से मुक्त करने के अनुरोध पर भू-अर्जन अधिनियम की धारा-93 (1) के अनुसार प्रत्याह्वरण किया जाता है.

1. प्रत्याह्वरण हेतु भूमि का विवरण :—

**ग्राम-बड़माल, प.ह.नं. - 30**

क्र. (1)	ख. नं. (2)	रकबा हे. (3)
1.	307/5	0.014
2.	309/1	0.153
3.	247/1ख	0.089
4.	220/1	0.032
5.	307/1	0.016
6.	248/2	0.028
7.	246	0.060
<b>कुल</b>		<b>0.392</b>

2. भू-अर्जन की कार्यवाही से मुक्त किये जा रहे भूमि का ब्यौरा अनुविभागीय अधिकारी (राजस्व), रायगढ़ के कार्यालय में देखा जा सकता है.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,  
**भीम सिंह**, कलेक्टर एवं पदेन उप-सचिव.

## विभाग प्रमुखों के आदेश

कार्यालय अनुविभागीय अधिकारी (रा.) डोंगरगांव, जिला-राजनांदगांव (छ.ग.)

डोंगरगांव, दिनांक 23 मई 2022

### राजस्व अनुवृत्ति पत्र

प्रकरण क्रमांक 202111092000001 ब/121 वर्ष 2020-21

क्रमांक/1329/प्र-1/अ.वि.अ./2022.—प्रकरण अनुविभागीय अधिकारी डोंगरगांव से प्राप्त प्रकरण का अवलोकन किया।

आवेदकगण सोनसाय एवं अन्य ग्रामवासी ग्राम सालहेटोला, तहसील छुरिया, जिला राजनांदगांव द्वारा ग्राम सालहेटोला को राजस्व ग्राम का दर्जा प्रदान करने बाबत कलेक्टर महोदय के समक्ष आवेदन प्रस्तुत किया गया है (वर्तमान में सालहेटोला, ग्राम गोडलवाही का भाग है) जो कार्यालयीन ज्ञापन क्रमांक/3486/भू.अ./स.अ.भू.अ./2021 राजनांदगांव दिनांक 06-10-2021 के माध्यम से आवश्यक कार्यवाही हेतु अनुविभागीय अधिकारी (रा.) डोंगरगांव को प्रेषित किया।

उक्त संबंध में अनुविभागीय अधिकारी (रा.) डोंगरगांव से ज्ञापन (जांच प्रतिवेदन) प्राप्त किया गया। अनुविभागीय अधिकारी (रा.) डोंगरगांव द्वारा प्राप्त पत्र क्रमांक 111/प्र.-1/अ.वि.अ./2022 डोंगरगांव 07-01-2022 में उल्लेख किया गया है, कि नायब तहसीलदार खुज्जी वृत्त छुरिया द्वारा प्रकरण दर्ज कर उद्घोषणा का प्रकाशन कराया गया, नियत समयावधि में कोई आपत्ति प्राप्त नहीं हुआ। उक्त संबंध में ग्राम पंचायत गोडलवाही से प्रस्ताव प्राप्त किया गया। ग्राम पंचायत गोडलवाही द्वारा ग्राम पंचायत गोडलवाही के टोला सालहेटोला को राजस्व ग्राम का दर्जा प्रदान किया जाने सर्व सम्मति से दिनांक 02-10-2021 प्रस्ताव क्रमांक 03 पारित किया गया है। राजस्व निरीक्षक एवं हल्का पटवारी से बिन्दुवार जांच प्रतिवेदन मंगाया गया जो निम्नानुसार है :—

क्र.	विवरण	मूल ग्राम गोडलवाही	विभाजन उपरांत गोडलवाही	प्रस्तावित ग्राम सालहेटोला
(1)	(2)	(3)	(4)	(5)
1.	वर्ष 2011 की जनगणना के अनुसार जनसंख्या	1585	992	593
2.	कुल खातेदारों की संख्या	441	331	110
3.	कुल खसरा नंबर	1108	691	417
4.	कुल रकबा (भौगोलिक क्षेत्रफल) हे.	612.672	341.131	271.541
5.	मकबूजा रकबा हे.	459.165	269.905	189.260
6.	गैर मकबूजा रकबा हे.	153.507	71.226	82.281
7.	चरनोई रकबा हे.	108.500	42.123	66.377
8.	सिंचित रकबा हे.	19.246	16.002	3.244
9.	असिंचित रकबा हे.	402.251	240.616	161.635
10.	कुल भू-राजस्व	607	363	244
11.	पशुओं की संख्या	313	204	109
12.	ग्राम पंचायत भवन	1	1	0
13.	शासकीय हेडपंप	17	9	8
14.	शासकीय कुंआ	2	1	1
15.	शासकीय तालाब	5	3	2
16.	निजी तालाब	0	0	0
17.	निजी कुंआ	5	4	1

(1)	(2)	(3)	(4)	(5)
18.	शमशान घाट	2	1	1
19.	कब्रिस्तान	0	0	0
20.	प्राथमिक शाला	2	1	1
21.	पूर्व माध्य. शाला	1	1	0
22.	हाईस्कूल	1	1	0
23.	उप स्वास्थ्य केन्द्र	1	1	0
24.	आंगनबाड़ी	3	2	1
25.	बाजार	बुधवार		
26.	यातायात	सुविधा है		
27.	मुख्य उत्पादन	धान	धान	धान
28.	आबादी का रकबा	4.685	3.476	1.209
29.	कुल परिवार की संख्या	292	180	112
30.	राजनांदगांव से दूरी	—	40 किमी	42 किमी
31.	ग्राम कोटवार	0	0	0

अनुविभागीय अधिकारी (रा.) डोंगरगांव से प्राप्त ट्रेसिंग क्लॉथ नक्शा अनुसार प्रस्तावित नवीन राजस्व ग्राम साल्हेटोला की चौहद्दी निम्नानुसार है :—

उत्तर में — ग्राम गोडलवाही  
दक्षिण में — जंगल सरकार  
पूर्व में — ग्राम मासूलकसा  
पश्चिम में — ग्राम बड़गाँव

प्रस्तावित नवीन राजस्व ग्राम साल्हेटोला की सीमा को ट्रेसिंग क्लॉथ नक्शा में लाल स्याही से तथा ग्राम गोडलवाही के शेष सीमा भाग को हरे स्याही से चिह्नित किया गया है।

उक्त तथ्यों के आधार पर अनुविभागीय अधिकारी (रा.) डोंगरगांव द्वारा प्रतिवेदित किया गया है, कि ग्राम साल्हेटोला को गोडलवाही से अपवर्जित कर नया राजस्व ग्राम घोषित जाना उचित होगा।

छ.ग. भू-राजस्व संहिता 1959 की धारा 68, 73 के अंतर्गत ग्रामों को विभाजित एवं संयोजित किये जाने का बंदोबस्त अधिकारी को प्राप्त है। संहिता की धारा 90-91 के तहत बंदोबस्त अधिकारी की समस्त शक्तियां राजस्व सर्वेक्षण बंद हो जाने से कलेक्टर को प्रदत्त है।

वर्तमान में राजस्व सर्वेक्षण बंद होने से छ.ग. भू-राजस्व संहिता की धारा 90, सहपठित धारा 73 के अंतर्गत बनाये नियमों के तहत ग्राम साल्हेटोला, तहसील छुरिया को विकास विस्तार की दृष्टि तथा प्रथम दृष्टया पात्रता होने से ग्राम साल्हेटोला, तहसील छुरिया को राजस्व ग्राम घोषित किया जाता है।

प्रकरण अनुविभागीय अधिकारी (रा.) डोंगरगांव की ओर आदेश के क्रियान्वयन एवं पालन हेतु प्रेषित किया जावे।

तारन प्रकाश सिन्हा,  
कलेक्टर.

**कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़**  
**शास्त्री चौक, पुराना मंत्रालय परिसर, रायपुर**

रायपुर, दिनांक 7 मार्च 2022

फा.क्र-18/03/निर्वाचन याचिका/2019-22.— भारत निर्वाचन आयोग, नई दिल्ली द्वारा जारी अधिसूचना संख्या 82/छ.ग.-वि.स./ (01/2019)/2022/2415 दिनांक 31 जनवरी 2022 लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी संख्या-01/2019 में दिए गए उच्च न्यायालय, छत्तीसगढ़ बिलासपुर के तारीख 24 नवम्बर, 2021 के आदेश को राज्य के शासकीय राजपत्र में सर्वसाधारण की जानकारी हेतु प्रकाशित किया जाता है।

( भुवनेश यादव )  
 मुख्य निर्वाचन पदाधिकारी.

**भारत निर्वाचन आयोग**  
**निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001**

नई दिल्ली, तारीख 31 जनवरी, 2022—11 माघ, 1943 (शक)

सं. 82/छ.ग.-वि.स./ (01/2019)/2022.— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 01/2019 में दिये गये उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के तारीख 24 नवम्बर, 2021 के आदेश को प्रकाशित करता है।

HIGH COURT OF CHHATTISGARH, BILASPUR

Election Petition No. 1 of 2019

Order reserved on : 8-10-2021

Order delivered on : 24-11-2021

**PETITIONER** : Tarika Tarangni, W/o Nirmal Lakra, aged about 39 years, Village Post Punjipatra, Tahsil Tamnar, Distt.-Raigarh (C.G.).

**VERSUS**

**RESPONDENTS** :

1. Chakradhar Singh Sidar, Vill. Post Katakliya, Tahsil Lailunga, District-Raigarh, Pin 496113.
2. Satyanand Rathiya, Vill. Roopali, Post Kolam, Tahsil Tamnar, District Raigarh, Pin 496107.
3. Darshana Sidar, Vill. Kamrga, Post Katakliya, Tahsil Lailunga, District Raigarh, Pin 496113
4. Sunil Minj, Village Bhuya Pani, PO Kurra, Katakliya, Tah. Lailunga, Distt. Raigarh, Pin 496113.
5. Hridayaram Rathiya, At/PO Kurra, Tahsil Lailunga, Distt. Raigarh (C.G.), Pin-496113.

6. Govind Singh Neti, Village Godhi, Tahsil Tamnar, District Raigarh, Pin-496107
7. Shivpal Bhagat, Village Sarasmal, PO Lailunga, Tahsil Tamnar, District Raigarh, Pin 496113.
8. Suresh Kumar, Village Ghatgaon, Post Ghatoon, Distt. Raigarh (C.G.) Pin 496113.
9. State Election Commission, Through State Election Commissioner, Near D.K.S. Bhawan, Old Mantralaya Road, Moti Bagh, Raipur, Chhattisgarh 492001.
10. The Returning Officer (deleted)

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For Election Petitioner : Mr. Manohar Lal Sharma, Mr. Santosh Kumar Pandey and Mr. T. L. Bareth, Advocates.

For Respondent No. 1 : Mr. B. P. Sharma and Mr. Hari Agrawal, Advocates.

For Respondent No. 2 to 9 : None present.

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**E. P. No. 1/2019**

**Hon'ble Shri Justice Sanjay K. Agrawal**

**C.A.V. Order**

1. The election petitioner herein has called in question the election of respondent No. 1 herein (returned candidate) from Legislative Assembly Constituency No. 15 Lailunga (ST), District Raigarh, on the ground enumerated under Section 100(1) (c) of the Representation of the People Act, 1951 (for short, 'the Act of 1951') that her nomination papers have been improperly rejected by the Returning Officer by its order dated 3-11-2018 vide Exhibits P-6A & P-6B.
2. **Election Petition by the Election Petitioner :—**
  - 2.1) The election petitioner has filed this election petition stating inter alia that on 6-10-2018, the Election Commission of India published in the Government official Gazette of Chhattisgarh, the election notification dated 6-10-2018 under Section 15 of the Act of 1951 and declared assembly election in the State of Chhattisgarh and notified the dates of Chhattisgarh Legislative Assembly (Vidhan Sabha) elections to the polls in two phases. In order to contest election from Constituency No. 15 Lailunga (ST), District Raigarh, the election petitioner herein obtained one set of nomination paper from the Returning officer to file her nomination in the said election and on 31-10-2018 vide Exhibit P-1 she filed her nomination paper with affidavit and in reply to para (2) of Part 3A of the said nomination paper, she has categorically declared that she was not holding any office of profit under Central or State Government and it is the case of the election petitioner that the Returning Officer i.e. respondent No. 10 herein (deleted) called her in office and directed her to file second nomination paper with correct answer to para (2) of Part 3A of the said nomination paper whether she was holding any office under Central or State Government, and she was informed that in case the second nomination paper is not filed, the first nomination paper is likely to be rejected, on which the petitioner, on 1-11-2018, filed her second set of nomination paper for the said constituency with affidavit vide Exhibit P-2 declaring at para (2) of Part 3A that she was holding the post of Rural Health Officer (Female) and due to long absence from service, the Department did not permit her presence and did not allow her to appear and join the service since last two years.
  - 2.2) It is the case of the election petitioner that vide Exhibit P-3, the Returning Officer fixed the date of scrutiny on 1-11-2018/3-11-2018 and on 1-11-2018, she was served with document Exhibit P-4 asking her to produce documents relating to her Government service by 2-11-2018 up-to 3 p.m. and thereafter, in compliance thereof, she filed an affidavit Exhibit p-5 stating that she was in

Government job as Rural Health Officer (RHO) (Female) in Sub-Health Centre, Kurrog & Bahirkela; Community Health Centre, Tamnar, and Primary Health Centre, Saraipali, and she was on leave from 28-7-2016 to 31-7-2016, thereafter, on 5-11-2016, when she communicated her joining, same was not accepted by letter dated 10-11-2018 and as such, she finally concluded that no departmental enquiry was instituted against her and since she is not in service from 1-8-2016 to 2-11-2018, on the pressure of Jindal Company, her services have been terminated and thus, she is not holding any office of profit. Both the nomination papers were considered by the Returning Officer and vide Exhibits P-6A & P-6B, the two nomination papers were rejected by the Returning Officer on 3-11-2018 holding that she has not filed any document to show that she has been terminated from service or she has resigned from service. On 20-11-2018, polling of that constituency took place and after 11-12-2018, counting process was completed and respondent No. 1 was declared elected from the said constituency which has been called in question by the election petitioner in this election petition.

- 2.3) It is the further case of the election petitioner that her nomination papers have improperly been rejected, as the first set of nomination paper filed by her to contest the election from Constituency No. 15 Lailunga (ST), District Raigarh was not rejected by the Returning Officer till date, therefore, she was entitled to contest the election. It is further submitted that since the first set of nomination paper was rejected only after she filed the second set of nomination paper and since the 1st set of nomination paper had no objection/defect of any kind, therefore, the Returning Officer could not have rejected the first nomination paper by rejecting the second nomination, it is a clear case of violation of Section 36 of the Act of 1951 and contrary to law and as such, both the nomination papers have improperly been rejected in violation of Section 36(3) of the Act of 1961. As such, her nomination papers have improperly been rejected and consequently, the election of respondent No. 1 deserves to be declared void.

3. **Written Statement by the Returned Candidate :—**

- 3.1) Written statement has been filed only by respondent No. 1 denying the averments made in the election petition stating that rejection of two nomination papers of the election petitioner by the Returning Officer is fully justified and the election petitioner in her election petition has not disputed the fact that she was working in the Department of Health as Rural Health Officer (Female) and the election petitioner was under misconception that due to her long absence and on account of some outside forces, her services have been terminated which is false to the knowledge of the petitioner herself. As such, the petitioner was in Government service on the date of filing nomination paper and she could not file documents showing that she has resigned from service or she has been terminated from service in accordance with the relevant provisions contained in the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, (the Rules of 1966') and therefore she is not qualified for being elected as a Member of Legislative Assembly and her nomination has rightly been rejected.
- 3.2) Specific statement has been made by respondent No. 1 in paragraph 40 of the written statement stating inter alia that since the election petitioner was in Government service, the Returning Officer vide Exhibit P-4 has rightly granted one day time till 2-11-2018 up to 3 p.m. to the election petitioner to file documents qua the Government service, but the petitioner could not substantiate that she has already resigned from service. It has been further averred that although the petitioner has filed affidavit vide Exhibit P-5 that her services have been terminated, but documents demonstrating her termination were not filed, therefore, vide Exhibits P-6A & P-6B, the Returning Officer was justified in rejecting her nomination papers, as the petitioner's services can be terminated except only in accordance with the Rules of 1966. Therefore, the nomination papers of the petitioner have rightly been rejected by the Returning Officer. It has also been pleaded that qualifications for membership of a Legislative Assembly have been stated in Section 5 of the Act of 1951 which has to be read along with Article 191(1)(a) of the Constitution of India which provides that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State, if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder. Since the petitioner was holding the office of profit as she was, on the date of scrutiny of nomination paper, in Government service being Rural Health Officer (Female) which is an office of profit and which is a disqualification of



membership being a Government servant, drawing or entitled to draw salary from the Government on account of holding post, therefore, the petitioner was disqualified under Article 191(1)(a) of the Constitution of India and as such, the Returning Officer was fully justified in rejecting the nomination papers after affording opportunity of hearing to the petitioner and as such, the election petition is liable to be dismissed.

4. **Issues and Findings on the Issues :—** On the basis of pleadings made by parties, following issues were framed and corresponding answers/findings are noted against each one of them :—

S. No. (1)	Issues (2)	Findings (3)
1.	Whether the election of respondent No. 1 from Lailunga Legislative Assembly Constituency No. 15 (Scheduled Tribe), Distt. Raigarh, is liable to be declared void under Section 100(1) (c) of the Representation of the People Act, 1951 for improper rejection of election petitioner's nomination paper by order dated 3-11-2018 by the Returning Officer on the ground of her being in service of the State Government ?	“NO”
2.	Whether the election petition as framed and filed is liable to be dismissed for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 including the proviso to Section 83 of the said Act and Rule 94A of the Conduct of Election Rules, 1961 ?	This issue has already been adjudicated as preliminary issue by order dated 26-7-2021 and review petition against that order has also been dismissed by order dated 4-10-2021.
3.	Relief and cost(s) which the election petitioner is entitled for ?	Election petitioner is not entitled for any relief as per paragraph 42 of this judgment.

5. In order to prove her case that her nomination papers were improperly rejected by the Returning Officer, though the election petitioner has entered into the witness box as PW-1, but she has not filed her affidavit under order 18 Rule 4 of the CPC and only in her examination-in-chief before the Court, she has exhibited documents Exhibits P-1 to P-5, P-6A & P-6B. When the evidence of the election petitioner commenced on 10-9-2021, learned counsel for respondent No. 1 has filed an application under Order 18 rule 4 of the CPC that the election petitioner has not filed her affidavit under Order 18 Rule 4 of the CPC, therefore, she is not entitled to record her evidence and prayed for a direction to the election petitioner to comply with the mandatory statutory provisions contained in Order 18 Rule 4 of the CPC while proceeding with examination/evidence of herself and/or her witnesses on which the order was reserved and to be considered at the time of final hearing/order.
6. Since the election petitioner did not choose to file affidavit under Order 18 Rule 4 of the CPC before commencement of trial of election petition and only choose to enter the witness box to prove the documents vide Exhibits P-1 to P-5, P-6A & P-6B, it is the choice of the election petitioner to file or not to file affidavit under Order 18 Rule 4 of the CPC, but she cannot be compelled to do so as she had already entered the witness box on 10-9-2021 and she has been extensively cross-examined by and on behalf of respondent No. 1. As such, this application I.A. No. 12/2021 is accordingly disposed of.
7. Similarly, learned counsel for respondent No. 1 raised a strong objection that the documents Exhibits P-1 to P-6, P-6A & P-6B are inadmissible in evidence and the election petitioner cannot prove those documents. Documents Exhibits P-1 to P-6, P-6A & P-6B are public documents and certified copies of which have been produced before the court at the instance of the election petitioner and which have been marked as exhibits. It is well settled law that mere marking of a document as an exhibit does not dispense with the proof of the document (See Sait Tarajee Khimchand and others V. Yelamarti Satyam and others<sup>1</sup>). Therefore, the objection raised on behalf of respondent No. 1 in this regard is hereby rejected.

8. In order to prove her case, the election petitioner examined herself as PW-1 and has produced documents Exhibits P-1 to P-5, P-6A & P-6B on 10-09-2021. Similarly, in opposition, though respondent No. 1 did not enter into the witness box, his election agent namely, Om Sagar Patel (DW-1) has entered into the witness box and Returning Officer Ashok Kumar Marbal has been examined as DW-2. Respondent No. 1 has brought documents Exhibits D-1 to D-8 on record. Ashok Kumar Marbal (DW-2) - Returning Officer has proved his signature on Exhibits P-4, P-6A & P-6B and also stated that he has rejected the nomination papers vide Exhibits P-6A & P-6B by order dated 3-11-2018.

9. **Submissions on behalf of the parties :—**

- 9.1) Mr. Manohar Lal Sharma, learned counsel appearing on behalf of the election petitioner, would submit as under :—

1. **The Returning Officer** — respondent No. 10 herein (deleted) has acted in improper manner firstly, by examining the nomination paper at the time of submission (before the date of scrutiny) and directed for submission of documents regarding Government service vide Exhibit P-4 and secondly, by rejecting both the nomination papers on the same date on the ground of the election petitioner being in Government service and has not filed documents showing resignation or otherwise, particularly when the election petitioner in her first nomination, has not said that she is a holder of the office of profit, as such, her nomination papers were improperly rejected.

2. The election petitioner was not in Government service as Rural Health Officer (Female) at the relevant point of time as her services were terminated on the pressure applied by Jindal company and she is not in service from 1-8-2016 to 2-11-2018 and she was not holding the office of profit as she has clearly stated in the affidavit filed before the Returning Officer vide Exhibit P-5 on 2-11-2018. The order of the Returning Officer vide Exhibits P-6A & P-6B was totally a wrong and perverse order and is violative of Article 21 of the Constitution of India and is also violative of Sections 30, 35 & 36 of the Act of 1951. The election petitioner was never holding any office of profit and she has been terminated and is covered by Section 25F of the Industrial Disputes Act, 1947, and relied upon the following judgments of the Supreme Court and other High Courts :—

1. Mohinder Singh Gill and another V. The Chief Election Commissioner, New Delhi and others<sup>2</sup> (Supreme Court).
2. Bangalore Water-Supply & Sewerage Board, etc. V. R. Rajappa and others<sup>3</sup> (Supreme Court).
3. The Divisional Forest Manager v. Shri Vinayak Kume<sup>4</sup> (Bombay High Court).
4. State of Rajasthan and other v. Harish Chandra Sharma and others<sup>5</sup> (Rajasthan High Court).
5. Mukundbhi Mangaldas Shrimali v. State of Gujarat<sup>6</sup> (Gujarat High Court).

- 9.2) Mr. B. P. Sharma and Mr. Hari Agrawal, learned counsel appearing for respondent No. 1, would submit that the Returning Officer has acted as per the directions contained in the Handbook for Returning Officer 2018 issued by the State Election Commission, which provides that he shall take decision by conducting preliminary examination of nomination papers immediately upon receiving the same and asking for submission of relevant documents relating to Government service. Thus, as per the directions/instructions, the Returning Officer has to scrutinize all the nomination papers together in view of the provisions contained in clause 6.5 of the aforesaid Handbook and as such, both the nomination papers were rightly rejected by the Returning Officer on 3-11-2018 vide Exhibits P-6A & P-6B, Since the election petitioner was in Government service, Rule 5 of the Chhattisgarh Civil Services (Conduct) Rules, 1965, bars a Government servant to take part in an

2 AIR 1978 SC 851

3 AIR 1978 SC 548

4 W.P. No. 3208/2011, decided on 27-9-2011

5 RLW 2006 (4) Raj 3028

6 Special Civil Application No. 11028/2001, decided on 30-6-2016

election to the legislature or the local authority. Similarly, unless an express order after departmental enquiry is passed, merely on account of absence from duty after expiry of leave, it cannot be presumed that her services have been terminated in view of Rule 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977. It was also submitted that since the election petitioner was admittedly in Government service and she was holding the office of profit in terms of Article 191(1)(a) of the Constitution of India, she was disqualified from contesting election and being chosen as a Member of Legislative Assembly and as such, her nomination papers were rightly rejected by the Returning Officer and thus, the election petition deserves to be dismissed.

10. Except respondent No. 1 other respondents have not chosen to appear and contest the election petition and no written statement was filed on their behalf, as such, they have been proceeded ex parte in this election petition.

11. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

12. **Reasons for finding on issues :—**

**Issue No. 1 :—** For the sake of convenience, issue No. 1 is divided in two parts in the following manner :—

1. Whether, on the date of filing nomination papers vide Exhibits P-1 & P-2, the election petitioner was in Government service in the Department of Health, as Rural Health Officer (Female) under the State of Chhattisgarh and as such, the Returning Officer - respondent No. 10 herein (deleted) was justified in rejecting her nomination papers on the ground of she being in Government service by taking both the nomination papers simultaneously ?

**and/or**

2. Whether, the election petitioner was disqualified for being chosen as a Member of Legislative Assembly on account of her holding the post of RHO (F) under the Government of Chhattisgarh being an office of profit and therefore in terms of Article 191(1)(a) of the Constitution of India disqualified from being chosen as a Member of Legislative Assembly ?

13. The election petitioner being an elector for Legislative Assembly Constituency No. 15 Lailunga (ST), District Raigarh, in order to contest election from the said constituency submitted her first nomination paper to the Returning Officer vide Exhibit P-1 on 31-10-2018 in which in Part 3A, para (2), she has clearly stated that she is not holding any office of profit either under the state Government or under the Union of India and thereafter, she submitted second nomination paper vide Exhibit P-2 on 1-11-2018 at 2.45 p.m. clearly stating in Part 3A, para (2), that she was holding the office of profit as Rural Health Officer (Female) in the Department of Health, but on account of her long absence, her joining has not been accepted and for last two years, she has not been allowed to work in the district office. The Returning Officer vide Exhibit P-3 after Preliminary examination on 1-11-2018 at 3.12 p.m. issued document Exhibit P-4 directing the election petitioner to produce documents qua her Government service by 2-11-2018 till 3p.m. in compliance of Exhibit P-4, the election petitioner filed affidavit Exhibit P-5 in which she has stated that from 8-8-2002 to 31-7-2016, she was in regular Government service as RHO (F) in Sub-Health Centre, Kurrog & Bahirkela; Community Health Centre, Tamnar, and Primary Health Centre, Saraipali, and she was on leave from 28-7-2016 to 31-7-2016, but thereafter, she has not been allowed to join, and finally, in paragraph 10, she has concluded that from 1-8-2016 to 2-11-2018, for two years, she is not in Government service and under the pressure of Jindal company, her services have been terminated and she is not holding office either under the Central or State Government. The election petitioner has filed documents in nine pages along with the affidavit which have been produced and exhibited by respondent No. 1 and Proved by the election petitioner vide Exhibits D-1 to D-8. On receipt of documents Exhibit P-5 and Exhibits D-1 to D-8, the Returning Officer vide Exhibits P-6A & P-6B, rejected both the nomination papers, as the election petitioner herself has admitted being in Government service but she has not produced any document of resignation demonstrating that her resignation has been accepted by the competent authority within the time limit fixed and accordingly, proceeded to reject the nominations vide Exhibits P-6A & P-6B and thereafter, the election as scheduled was held in which respondent No. 1 has been declared elected which is sought to be challenged by the petitioner on the sole ground that her nomination papers have been improperly rejected by the Returning Officer.

14. The first and foremost objection that has been taken on behalf of the election petitioner is that both the nomination papers Exhibits P-1 & P-2 were considered and rejected simultaneously, they ought to have been considered separately it is the case of the petitioner that the Returning Officer made preliminary examination of her first nomination paper and directed her to file second nomination paper, and under the threat of rejection of her first nomination paper, she has filed the second nomination paper.
15. Mr. Ashok Kumar Marbal, who at the relevant point of time functioned as Returning Officer, has been examined as DW-2. In his evidence before the Court, he has clearly stated that following the procedure prescribed in the Handbook for Returning Officer 2018 issued by the State Election Commission and the procedure prescribed for scrutiny of nomination papers and upon preliminary examination as prescribed in clause 5.11.1 and in view of the fact that the petitioner herself having stated in Exhibit P-2 that she is holding the office of profit being RHO (F) in the Department of Health and her joining has not been accepted on account of long absence, Exhibit P-4 was issued to her in the format prescribed in the said Handbook to which the petitioner has submitted reply in shape of affidavit Exhibit P-5 and as per the procedure contained in clause 6.5 of the aforesaid Handbook, both the nomination papers have scrutinized simultaneously.
16. In order to decide the said plea, it would be appropriate to notice clause 6.5.1. of the Handbook for Returning Officer 2018 contained in clause 6.5. which provides for Scrutinization of all nomination papers. Clause 6.5.1. states as under :—

**“6.5. All Nomination Papers to be Scrutinized**

6.5.1. Returning Officer should then take up nomination papers one after another and scrutinize them, If more than one nomination paper has been presented by or on behalf of one candidate, he/she should take them up together and scrutinize them one after another. It would not be correct or legal to pass over other nomination papers of a candidate without scrutiny, merely because one or more nomination papers of that candidate have been already found valid by the Returning Officer.”

17. A careful perusal of the aforesaid provision would show that if more than one nomination paper has been presented by or on behalf of one candidate, all nomination papers have to be taken together and have to be scrutinized one after another, meaning thereby, all the nomination papers have to be taken together and they are not supposed to be decided separately. In the instant case, since the election petitioner has filed two nomination papers vide Exhibits P-1 & P-2 for contesting the election in Lailunga Assembly Constituency No. 15 (ST), both the nomination papers were considered together by the Returning Officer and in view of reply made by the petitioner in Part 3A, para (2) of Exhibit P-2 that she was holding the office of profit but she has not been allowed to join, Exhibit P-4 was issued to the petitioner and thereafter, considering her affidavit Exhibit P-5, both the nomination papers were rejected vide Exhibits P-6A & P-6B. As such, the Returning Officer has rightly followed the procedure and rightly took-up the nomination papers Exhibits P-1 & P-2 together and rightly considered the same together as per the procedure prescribed by considering the two nomination papers filed by one candidate and thus, no objection could have been taken in that respect that both the nomination papers could have been decided separately. The procedure followed by the Returning Officer in considering both the nomination papers simultaneously is in accordance with clause 6.5, of the Handbook for Returning Officer 2018 and otherwise also, it is established practice to consider the two nomination papers of one candidate together, which cannot be said to be erroneous or illegal in law. I do not find any merit in the contention raised by learned counsel for the petitioner that both the nomination papers could not have been considered simultaneously at the time of scrutiny and therefore the nomination paper Exhibit P-1 could have been rejected as there was no objection in that regard.
18. It is the case of the election petitioner that though she was holding the post of Rural Health Officer (Female) in the Department of Health as a regular Government servant from 8-8-2002 to 31-7-2016 and she remained on leave from 28-7-2016 to 31-7-2016, but thereafter, when she submitted letter dated 5-11-2016 for joining, it was not accepted and number of letters vide Exhibits D-1 to D-3 were submitted by her for joining and finally, she was given a letter by the Block Medical Officer, Tamnar to obtain permission from the Chief Medical & Health Officer, Distt. Raigarh to join in the Government service, vide Exhibit D-4, thereafter, she also submitted letters to the CMHO, Distt. Raigarh, vide Exhibit D-5 to D-8, but she was not allowed to join in service and thus, she is not in Government service from 1-8-2016 to 2-11-2018 and as such, her services have been terminated on the pressure of Jindal company and she is not holding any office of profit

under the State or the Central Government. Document Exhibit P-2 is the document of the election petitioner herself in which she has stated in Part 3A, para (2), as under :—

भाग 3क  
(अभ्यर्थी द्वारा भरा जाए)

(1)      xxx      xxx      xxx  
             xxx      xxx      xxx  
             xxx      xxx      xxx

(2) क्या अभ्यर्थी भारत सरकार या राज्य सरकार के अधीन कोई लाभ का पद धारण कर रहा है ? स्वा. विभाग (R.H.O.F.) (हां/नहीं).

यदि हां, धारित पद के ब्यौरे लंबे समय से अनुपस्थित रहने के कारण विभाग ने मेरी उपस्थिति मान्य नहीं की 2 वर्षों से मुझे जिला कार्यालय से कार्य में उपस्थित होने की अनुमति नहीं दी गई है.

19. It is appropriate to mention here that Exhibit P-2 is the document of the election petitioner herself and in her cross-examination, paragraph 5, she has clearly stated the aforesaid fact to be correct. Similarly in the affidavit submitted by her before the Returning Officer (Exhibit P-5), she has specifically stated that she was in Government service from 8-8-2002 to 31-7-2016 as RHO (F) in Sub-Health Centre, Kurrog & Bahirkela, Community Health Centre, Tamnar; and Primary Health Centre, Saraipali. As such, the fact of the election petitioner being a Government servant on the date of nomination is not in dispute. What she has stated in Exhibit P-2, in Part 3A, para (2) as well as in Exhibit P-5 is that she was not allowed to join despite several letters Exhibits D-1 to D-3 & D-5 to D-8 and no departmental enquiry was held against her and she is not in Government service from 1-8-2016 to 2-11-2018 for last two years and on the pressure of Jindal company, her services have been terminated and she is not holding the office of profit and same amounts to oral termination of service.

20. As such, it is duly established from the aforesaid facts that the election petitioner was appointed as regular Government servant in the Department of Health as RHO (F) in August, 2008, she was a regular Government servant and she continued on the post up to 31-7-2016. On 28-7-2016, she proceeded on leave up to 31-7-2016, but thereafter, on 5-11-2016, it is her case that she was not allowed to join in the Government service which is apparent from Exhibit D-1 to D-3 and vide Exhibit D-4, the Block Medical Officer, Tamnar asked her to seek permission from the CMHO, Distt. Raigarh which she submitted asking for her joining vide Exhibit D-5 to D-8, but she was not permitted to join. As such it is a case of absence from service after expiry of leave.

21. Rule 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977 (for short, 'the Rules of 1977') provides the consequence of absence from duty after expiry of leave. It states as under :—

“24. **Absence after expiry of leave.—**

(1) Unless the authority competent to grant leave extends the leave, Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.”

22. A careful perusal of the aforesaid rule would show that in case of long absence or remaining absent after the end of leave without grant by the competent authority, the Government servant is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account. Similarly, by virtue of sub-rule (2) of Rule 24 of the Rules of 1977, willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action. Pursuant to the departmental proceeding, a Government servant can be inflicted the penalties set-out in Rule 10 of the Rules of 1966 which can be minor penalties as well as major penalties and which rests exclusively within the jurisdiction and domain of the disciplinary authority. However, in view of Rule 24(2) of the Rules of 1977, long absence after expiry of leave will not amount to automatic termination of service as for termination of service there has to be a departmental

enquiry in case of regular Government servant in accordance with the Rules of 1966 and penalty of termination can be inflicted as major penalty after recording a finding of grave misconduct, except in cases covered by 2nd proviso to sub-clause(2) of Article 311 of the Constitution of India, where the authority empowered to dismiss or remove/reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.

23. Admittedly, in the present case, on the own showing of the election petitioner vide Exhibit P-5 in paragraph 9, it has clearly been stated that no departmental enquiry was instituted against her and as such, there is no order of termination passed against her. The petitioner has only stated in paragraph 10 of Exhibit P-5 that she is not in Government service with effect from 1-8-2016 to the date of scrutiny i.e. 2-11-2018 and her services have been terminated that too on the pressure of Jindal company and she is not holding any office of profit which the Returning Officer did not accept holding that since the petitioner is in regular government servant and she has not produced the order of termination or letter of resignation within the time limit given by him, therefore, in that view of the matter, her nomination papers are rejected. and thus, the Returning officer did not accept the fact of oral termination from service claimed by the election petitioner.
24. At this stage, it would be extremely relevant to notice Rule 5 of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (for short, the Rules of 1965') by which the Government servants are barred from participating in the election of any legislature or local authority. Sub-rule (4) of Rule 5 of the Rules of 1965 states as under :—

“5. **Taking part in politics and elections.**— (1) to (3) XXX XXX

- (4) No Government servant shall canvas or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority :

**Provided that —**

- (i) a Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted ;
- (ii) a Government servant shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the due performance or a duty imposed on him by or under any law for the time being in force.

**Explanation.**— The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule.”

25. A focused glance of the aforesaid provision would show that the legislature has designedly thought it expedient to restrain/injunct the government servant either to canvas or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority. The legislative object of enacting such rule is that the status enjoyed by the candidates shall not be allowed to be prejudicial vis-a-vis candidates who do not enjoy such a status. As such, the election petitioner being a regular Government servant on the date of filling nomination was by virtue of Rule 5(4) of the Rules of 1965 specifically prohibited from taking part in the election to the legislature, as the said provision is imperative in nature being the legislative injunction restraining the Government servant from taking part in election to any legislature or local authority, in any manner whatsoever.
26. In the matter of Chet Ram V. Jit Singh<sup>7</sup>, the Supreme Court considered rule 22(4) of the Department of Posts, Gramin Dak Sewak (Conduct and Employment) Rules, 2001 which contained prohibition against taking part in election to any legislative or local authority and held that since there is a specific prohibition in statutory rules against taking part in elections of legislative assembly or local authority, the candidate is

disqualified from contesting in the election. It has been observed in paragraph 9 of the report as under :—

“9. Indisputably, the terms and conditions of a Gramin Dak Sewak are governed by the provisions of the Rules ;

sub-rule (4) of Rule 22 whereof reads as under :

“22. (4) No Sevak shall canvass or otherwise interfere with or use his influence in connection with, or take part in an election to any legislative or local authority.”

The said Rules were framed in terms of proviso appended to Article 309 of the Constitution of India. The terms and conditions of employment of a Gramin Dak Sewak are governed by statutory rules. The Rules framed in terms of the proviso appended to Article 309 of the Constitution of India indisputably govern only government employees. It was, therefore, for appellant to show that he was not governed by the Rules.”

27. Since the election petitioner was specifically prohibited by sub-rule (4) of Rule 5 of the Rules of 1965 from taking part in election and the said rule is statutory in nature, the petitioner contested the election in direct conflict with specific prohibition contained in the above-stated rule applicable to her.

28. In view of the above-stated finding, the plea of termination advanced by learned counsel for the petitioner has no force and accordingly it is rejected. Similarly, the judgments cited by Mr. Manohar Lal Sharma, learned counsel, are clearly inapplicable and distinguishable to the facts of the present case.

29. Now, the question for consideration is, whether the election petitioner was disqualified for being chosen as Member of Legislative Assembly on account of her holding the office of profit under the Government of Chhattisgarh ?

30. In order to adjudicate the plea, it would be appropriate to notice the provision contained in Article 191 (1)(a) of the Constitution of India which states as under :—

“191. **Disqualifications for membership.**— (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State —

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder,”

31. The principal contained in Article 191 of the Constitution of India is based on sound public policy of ensuring impartiality and neutrality in public service and avoidance of conflict between duty and interest of an elected member enabling him to carry on his duties, freely and fearlessly without being subjected to any governmental pressure thereby maintaining purity of legislature. The object of said provision Article 191 (1)(a) of the Constitution is to disqualify a person from membership of legislature, if he/she is obliged to the Government for an office which carries benefit or profit and thus, compromising his/her independence.

32. An ‘office of profit’ is an office which is capable of yielding a profit or pecuniary gain. In order to be an office of profit, the office must carry various pecuniary benefits or must be capable of yielding pecuniary benefits such as providing for official accommodation or even a chauffeur driven car. Holding an office the Central or state Government to which some pay, salary emolument, remuneration or non-compensatory allowance are attached is “holding an office of profit”. The question whether a person holds an office of profit is required to be interpreted in a realistic manner.

33. For deciding the question as to whether one is holding an office of profit or not, what is relevant is, whether the office is capable of “yielding” a profit or “pecuniary gain” and not whether the person actually obtained monetary gain. If the ‘pecuniary’ gain is receivable in connection with the office, then it becomes an office of profit, irrespective of the fact whether such pecuniary gain is actually received or not. If the office carries

with it, or entitles the holder to any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit. (See *Jaya Bachchan V. Union of India*<sup>8</sup>.)

34. The Supreme Court in the matter of *Shivamurthy Swami Inamdar V. Agadi Sanganna Andanappa*<sup>9</sup> while taking into consideration its earlier decision in the matter of *Ravanna Subanna v. G. S. Kaggeerappa*<sup>10</sup> laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. It has been observed by their Lordships of the Supreme Court in *Shivamurthy Swami Inamdar* (supra) as under :—

“14. Therefore before the provisions of that Article can be attracted, it must be established that he was holding an office under the Union or the State Government and that that office was an office of profit and thereafter we must see whether the disqualification relating to that office has been removed by any Parliamentary legislation. In other words, the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. The word ‘profit’ connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit—see *Revanna Subanna v. G. S. Kaggeerappa* (AIR 1954 SC 653). This Court in several decisions has laid down the tests for finding out whether an office in question is an office under a government and whether it is an office of profit. Those tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) what are the functions of the holder? Does he perform them for the Government and (5) Does the Government exercise any control over the performance of those functions? see *abdul Shakur v. Rikhab Chand*<sup>11</sup>; *Ramappa v. Sangappa*<sup>12</sup>; and *Govinda Basu v. Sankari Prasad*<sup>13</sup>. .....”

35. Similarly, in the matter of *Biharilal Dobray v. Roshan Lal Dobray*<sup>14</sup>, the Supreme Court while considering the earlier decisions and highlighting the object of enacting Article 191(1)(a) of the Constitution of India, held in paragraph 5 as under :—

“5. The object of enacting Article 191 (1) (a) is plain. A person who is elected to a Legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office, there is every likelihood of such person succumbing to the wishes of Government. Article 191 (1)(a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the Legislatures. The term “office of profit under the Government” used in the above clause though indeterminate is an expression of wider import than a post held under the Government which is dealt with in Part XIV of the Constitution. For holding an office of profit under the Government a person need not be in the service of the Government and there need not be any relationship of master and servant between them. An office of profit involves two elements, namely, that there should be an office and that it should carry some remuneration. In order to determine whether a person holds an office of profit under the Government several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder of the office, whether the Government pays the remuneration, whether the functions performed by the holder are carried on by him for the Government and whether the Government has control over the duties and functions of the holder. Whether an office in order to be characterised as an office of profit under the Government should satisfy all these tests or whether any one or more of them may be decisive of its true nature has been the subject matter of several cases decided by this Court but no decision appears to lay down conclusively the characteristics of an office of profit under the Government although the Court has no doubt determined in each case whether the particular office involved in it was such an office or not having regard to its features.”

8 AIR 2006 SC 2119  
9 1971 (3) SCC 870  
10 AIR 1954 SC 653  
11 1958 SCR 387  
12 1959 SCR 1167  
13 (1964) 4 SCR 311  
14 (1984) 1 SCC 551



36. Similarly, in the matter of *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev* and another<sup>15</sup>, again the Supreme Court set-out some of the tests/principles for determining whether a person holds an office of profit under the Government and summarized the legal principles in paragraphs 11 and 18 as under :—
- “11. On a careful examination of the ratio laid down in the above-mentioned cases some of the tests or principles that emerge for determining whether a person holds an office of profit under the Government, may be summarised thus:
- “(1) The power of the Government to appoints a person in office or to revoke his appointment at its discretion. The mere control of the Government over the authority having the power to appoints, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature.
- (2) The payment from out of the Government revenues are important factors in determining whether a person is holding an office of profit or not of the Government. Though payment form a source other than the Government revenue is not always a decisive factor.
- (3) The incorporation of a body corporate and entrusting the functions to it by the Government may suggest that the statute intended it to be a statutory corporation independent of the Government. But it is not conclusive on the question whether it is really so independent. Sometimes, the form may be that of a body corporate independent of the Government, but in substance, it may just be the alter ego of the Government itself.
- (4) The true test of determination of the said question depends upon the degree of control the Government has over it, the extent of control exercised by very other bodies or committees, and its composition, the degree of its dependence on the Government for its financial needs and the functional aspect, namely, whether the body is discharging any important Governmental function or just some function which is merely optional from the points of view of the Government.”
18. Articles 102(1)(a) and 191(1)(a) are incorporated in order to eliminate or reduce the risk of conflict between the duty and interest amongst the members of the Legislature and to ensure that the Legislature does not contain persons who have received benefits from the Executive and who consequently being under an obligation might be amenable to its influence. Therefore this object must be borne in mind in interpreting these Articles. It is in this context the words “under the Government” so far as the present case is concerned, become more relevant and should be examined from that perspective keeping in view the necessary power to appoint or remove.”
37. In the matter of *Shibu Soren v. Dayanand Sahay* and others<sup>16</sup>, the Supreme Court took under review the earlier decisions on the point and observed in paragraphs 24, 25, 26 and 27 as under :—
- “24. In *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*, (1992) 4 SCC 404, the appellant had been appointed as a single teacher in a primary school by the Project officer of the Integrated Tribal Development Agency (ITDA). The High Court held that the appellant was holding an “office of profit” and had, thus, incurred a disqualification envisaged by Article 191(1)(a) of the Constitution. Setting aside the order of the High Court, and allowing the appeal it was held by this Court: SCC p. 428-29, para 29
- “29. What emerges from the above discussion is that the Government has some control over the ITDA which is set up as a project, since it provides funds and sanctions the posts; the District Collector is appointed as Project Officer and some officers are ex officio members of the ITDA which carries out the object of providing compulsory education in tribal areas. But the ITDA is a registered society having its own constitution. Though the Project Officer is the District Collector, he acts as a different entity. The power to appoint or to remove teachers is not with the Government but with the Project Officer. The Government

15 (1992) 4 SCC 404

16 (2001) 7 SCC 425

may have control over the appointing authority but has no direct control over the teachers. The small post that appellant holds in ITDA is only that of a teacher who is directly under the control of the Project Officer. In such a situation the question of any conflict between his duties and interests as an elected member does not arise since it cannot be said that he, as a teacher, can be subjected to any kind of pressure by the Government which has neither the power to appoint him nor to remove him from service. Taking a practical view of the substance of these factors into consideration, we are of the view that the appellant cannot be held to be holding an office of profit under the Government”.

(emphasis supplied)

25. From a resume of precedents noticed above we find that in order to attract disqualification contained in Article 102(1)(a), a person must not only be holding “an officer” but that office must be “an office of profit” and should be “under the Government” and should be an office other than an office declared by the competent legislature by law not to disqualify its holder. The first question which comes to the fore, therefore is as to when can a person be said to be “holding an office of profit” under the Government.
26. The expression “office of profit” has not been defined either in the Constitution or in the Representation of the People Act. In common parlance, the expression “profit” connotes an idea of some pecuniary gain. If there is really some gain, its label — “honorarium” — “remuneration” — “Salary” is not material — it is the substance and not the form which matters and even the quantum or amount of “pecuniary gain” is not relevant — what needs to be found out is whether the amount of money receivable by the person concerned in connection with the office he holds, gives to him some “Pecuniary gain”, other than as “compensation” to defray his out-of-pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him.
27. With a view to determine whether the office concerned is an “office of profit”, the court must, however, take a realistic view. Taking a broad or general view, ignoring essential details is not desirable nor is it permissible to take a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the object of the enactment. Courts, therefore, while construing a statute avoid strict construction by construing the entire Act. (See with advantage *Ashok Kumar Bhattacharyya v. Ajoy Biswas*<sup>17</sup>, *Tinsukhia Electric supply Co. Ltd. v. State of Assam*<sup>18</sup>, and *CIT v. J.H. Gotla*<sup>19</sup>.)
38. In *Jaya Bachchan* (supra), the Supreme Court has considered clause (1) (a) of Article 102 of the Constitution of India, which is *pari materia* to Article 191 (1) (a) of the Constitution, and following the earlier decisions, held as under :—
  - “6. Clause (1) (a) of Article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The term “holds an office of profit” though not defined, has been the subject-matter of interpretation, in several decisions of this Court. An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is “holding an office of profit”. The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form, Nomenclature is not important. In fact, mere use of the word “honorarium” cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State

17 (1985) 1 SCC 151

18 (1989) 3 SCC 709

19 (1985) 4 SCC 343

expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the “pecuniary gain” is “receivable” in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a). This position of law stands settled for over half a century commencing from the decisions of *Ravanna Subanna v. G.S. Kaggeerappa*, AIR (1954) SC 653; *Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa*, (1971) 3 SCC 870; *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev.* (1992) 4 SCC 404 and *Shibu Soren v. Dayanand Sahay*, (2001) 7 SCC 425.”

39. In the matter of State Election Commissioner, Bihar, Patna and others v. Janakdhari Prasad and others<sup>20</sup>, the Supreme Court has held that the nature of disqualification has to be strictly construed keeping in mind that right to contest an election is not a fundamental right out the said right may be curtailed under valid statutory provision.
40. Finally, in the matter of Narayan Dinbaji Jambhule v. Dr. Deorao Madguji Holi and others<sup>21</sup>, the Bombay High Court in facts similar to the case in hand held that respondent No. 5 therein who was employed as Medical Officer, in Class-II, Group “A” Services and was in employment of State Government on the day on which he submitted nomination for Assembly Elections, held office of profit as contemplated by Article 191 (1) (a) of the Constitution of India and thus, he stands disqualified to be chosen as member of Legislative Assembly as per Article 191(1)(a) of the Constitution and Section 100(1)(a) of the Act of 1951 and quashed the election of the returned candidate (respondent No. 5) holding that he was not qualified to be chosen as a member of Legislative Assembly.
41. Reverting to the facts of the present case in the light of the aforesaid legal proposition flowing from the decisions rendered by the Supreme Court and the Bombay High Court in Narayan Dinbaji Jambhule (supra), it is quite vivid that the election petitioner being Rural Health Officer (Female) and thereby a regular Government servant on the roll of the State Government on the date on which she submitted nomination paper for assembly election, and though on the date of submission of nomination paper, she was not actually working on account of her joining not being accepted by the competent authority, but she was admittedly, a Government servant who was entitled to draw, salary and allowances, as such, was holding the office of profit and therefore disqualified from being chosen as a member of Legislative Assembly and therefore the Returning Officer is justified in rejecting her nomination papers vide Exhibits P-6A & P-6B. The election petitioner has failed to demonstrate that her nomination papers were improperly rejected by the Returning Officer within the meaning of Section 100(1)(c) of the Act of 1951.

**Relief and cost :—**

42. As a fallout and consequence of the aforesaid discussion, the election petition deserves to be and is accordingly dismissed. in the facts and circumstances of the case, parties shall bear their own cost(s).
43. A copy of this order be sent to the State Election Commission forthwith as required by Section 103 of the Act of 1951.

Sd/-  
SANJAY K. AGRAWAL,  
Election Judge.

आदेश से,

हस्ता./-  
( नरेन्द्र ना. बुटोलिया )  
वरिष्ठ प्रधान सचिव,  
भारत निर्वाचन आयोग.

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, dated 31st January, 2022—11 Magha, 1943 (Saka)

No. 82/CGH-LA/(01/2019)/2022.—In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publish Order dated the 24th November, 2021 of the High Court of Chhattisgarh, Bilaspur, in Election Petition No. 01 of 2019.

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Election Petition No. 1 of 2019

Order reserved on : 8-10-2021

Order delivered on : 24-11-2021

**PETITIONER** : Tarika Tarangni, W/o Nirmal Lakra, aged about 39 years, Village Post Punjipatra, Tahsil Tamnar, Distt.-Raigarh (C.G.).

**VERSUS**

**RESPONDENTS** :

1. Chakradhar Singh Sidar, Vill. Post Katakliya, Tahsil Lailunga, District-Raigarh, Pin 496113.
2. Satyanand Rathiya, Vill. Roopali, Post Kolam, Tahsil Tamnar, District Raigarh, Pin 496107.
3. Darshana Sidar, Vill. Kamrga, Post Katakliya, Tahsil Lailunga, District Raigarh, Pin 496113
4. Sunil Minj, Village Bhuya Pani, PO Kurra, Katakliya, Tah. Lailunga, Distt. Raigarh, Pin 496113.
5. Hridayaram Rathiya, At/PO Kurra, Tahsil Lailunga, Distt. Raigarh (C.G.), Pin-496113.
6. Govind Singh Neti, Village Godhi, Tahsil Tamnar, District Raigarh, Pin-496107
7. Shivpal Bhagat, Village Sarasmal, PO Lailunga, Tahsil Tamnar, District Raigarh, Pin 496113.
8. Suresh Kumar, Village Ghatgaon, Post Ghatoon, Distt. Raigarh (C.G.) Pin 496113.
9. State Election Commission, Through State Election Commissioner, Near D.K.S. Bhawan, Old Mantralaya Road, Moti Bagh, Raipur, Chhattisgarh 492001.
10. The Returning Officer (deleted)

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For Election Petitioner : Mr. Manohar Lal Sharma, Mr. Santosh Kumar Pandey and Mr. T. L. Bareth, Advocates.

For Respondent No. 1 : Mr. B. P. Sharma and Mr. Hari Agrawal, Advocates.

For Respondent No. 2 to 9 : None present.

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E. P. No. 1/2019

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The election petitioner herein has called in question the election of respondent No. 1 herein (returned candidate) from Legislative Assembly Constituency No. 15 Lailunga (ST), District Raigarh, on the ground enumerated under Section 100(1) (c) of the Representation of the People Act, 1951 (for short, 'the Act of 1951') that her nomination papers have been improperly rejected by the Returning Officer by its order dated 3-11-2018 vide Exhibits P-6A & P-6B.
2. **Election Petition by the Election Petitioner :—**
  - 2.1) The election petitioner has filed this election petition stating inter alia that on 6-10-2018, the Election Commission of India published in the Government official Gazette of Chhattisgarh, the election notification dated 6-10-2018 under Section 15 of the Act of 1951 and declared assembly election in the State of Chhattisgarh and notified the dates of Chhattisgarh Legislative Assembly (Vidhan Sabha) elections to the polls in two phases. In order to contest election from Constituency No. 15 Lailunga (ST), District Raigarh, the election petitioner herein obtained one set of nomination paper from the Returning officer to file her nomination in the said election and on 31-10-2018 vide Exhibit P-1 she filed her nomination paper with affidavit and in reply to para (2) of Part 3A of the said nomination paper, she has categorically declared that she was not holding any office of profit under Central or State Government and it is the case of the election petitioner that the Returning Officer i.e. respondent No. 10 herein (deleted) called her in office and directed her to file second nomination paper with correct answer to para (2) of Part 3A of the said nomination paper whether she was holding any office under Central or State Government, and she was informed that in case the second nomination paper is not filed, the first nomination paper is likely to be rejected, on which the petitioner, on 1-11-2018, filed her second set of nomination paper for the said constituency with affidavit vide Exhibit P-2 declaring at para (2) of Part 3A that she was holding the post of Rural Health Officer (Female) and due to long absence from service, the Department did not permit her presence and did not allow her to appear and join the service since last two years.
  - 2.2) It is the case of the election petitioner that vide Exhibit P-3, the Returning Officer fixed the date of scrutiny on 1-11-2018/3-11-2018 and on 1-11-2018, she was served with document Exhibit P-4 asking her to produce documents relating to her Government service by 2-11-2018 up-to 3 p.m. and thereafter, in compliance thereof, she filed an affidavit Exhibit P-5 stating that she was in Government job as Rural Health Officer (RHO) (Female) in Sub-Health Centre, Kurrog & Bahirkela; Community Health Centre, Tamnar, and Primary Health Centre, Saraipali, and she was on leave from 28-7-2016 to 31-7-2016, thereafter, on 5-11-2016, when she communicated her joining, same was not accepted by letter dated 10-11-2018 and as such, she finally concluded that no departmental enquiry was instituted against her and since she is not in service from 1-8-2016 to 2-11-2018, on the pressure of Jindal Company, her services have been terminated and thus, she is not holding any office of profit. Both the nomination papers were considered by the Returning Officer and vide Exhibits P-6A & P-6B, the two nomination papers were rejected by the Returning Officer on 3-11-2018 holding that she has not filed any document to show that she has been terminated from service or she has resigned from service. On 20-11-2018, polling of that constituency took place and after 11-12-2018, counting process was completed and respondent No. 1 was declared elected from the said constituency which has been called in question by the election petitioner in this election petition.
  - 2.3) It is the further case of the election petitioner that her nomination papers have improperly been rejected, as the first set of nomination paper filed by her to contest the election from Constituency No. 15 Lailunga (ST), District Raigarh was not rejected by the Returning Officer till date, therefore, she was entitled to contest the election. It is further submitted that since the first set of nomination paper was rejected only after she filed the second set of nomination paper and since the 1st set of nomination paper had no objection/defect of any kind, therefore, the Returning Officer could not have rejected the first nomination paper by rejecting the second nomination, it is a clear case of

violation of Section 36 of the Act of 1951 and contrary to law and as such, both the nomination papers have improperly been rejected in violation of Section 36(3) of the Act of 1961. As such, her nomination papers have improperly been rejected and consequently, the election of respondent No. 1 deserves to be declared void.

3. **Written Statement by the Returned Candidate :—**

3.1) Written statement has been filed only by respondent No. 1 denying the averments made in the election petition stating that rejection of two nomination papers of the election petitioner by the Returning Officer is fully justified and the election petitioner in her election petition has not disputed the fact that she was working in the Department of Health as Rural Health Officer (Female) and the election petitioner was under misconception that due to her long absence and on account of some outside forces, her services have been terminated which is false to the knowledge of the petitioner herself. As such, the petitioner was in Government service on the date of filing nomination paper and she could not file documents showing that she has resigned from service or she has been terminated from service in accordance with the relevant provisions contained in the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, (the Rules of 1966') and therefore she is not qualified for being elected as a Member of Legislative Assembly and her nomination has rightly been rejected.

3.2) Specific statement has been made by respondent No. 1 in paragraph 40 of the written statement stating inter alia that since the election petitioner was in Government service, the Returning Officer vide Exhibit P-4 has rightly granted one day time till 2-11-2018 up to 3 p.m. to the election petitioner to file documents qua the Government service, but the petitioner could not substantiate that she has already resigned from service. It has been further averred that although the petitioner has filed affidavit vide Exhibit P-5 that her services have been terminated, but documents demonstrating her termination were not filed, therefore, vide Exhibits P-6A & P-6B, the Returning Officer was justified in rejecting her nomination papers, as the petitioner's services can be terminated except only in accordance with the Rules of 1966. Therefore, the nomination papers of the petitioner have rightly been rejected by the Returning Officer. It has also been pleaded that qualifications for membership of a Legislative Assembly have been stated in Section 5 of the Act of 1951 which has to be read along with Article 191(1)(a) of the Constitution of India which provides that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State, if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder. Since the petitioner was holding the office of profit as she was, on the date of scrutiny of nomination paper, in Government service being Rural Health Officer (Female) which is an office of profit and which is a disqualification of membership being a Government servant, drawing or entitled to draw salary from the Government on account of holding post, therefore, the petitioner was disqualified under Article 191(1)(a) of the Constitution of India and as such, the Returning Officer was fully justified in rejecting the nomination papers after affording opportunity of hearing to the petitioner and as such, the election petition is liable to be dismissed.

4. **Issues and Findings on the Issues :—** On the basis of pleadings made by parties, following issues were framed and corresponding answers/findings are noted against each one of them :—

S. No. (1)	Issues (2)	Findings (3)
1.	Whether the election of respondent No. 1 from Lailunga Legislative Assembly Constituency No. 15 (Scheduled Tribe), Distt. Raigarh, is liable to be declared void under Section 100(1) (c) of the Representation of the People Act, 1951 for improper rejection of election petitioner's nomination paper by order dated 3-11-2018 by the Returning Officer on the ground of her being in service of the State Government ?	"NO"

(1)	(2)	(3)
2.	Whether the election petition as framed and filed is liable to be dismissed for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 including the proviso to Section 83 of the said Act and Rule 94A of the Conduct of Election Rules, 1961 ?	This issue has already been adjudicated as preliminary issue by order dated 26-7-2021 and review petition against that order has also been dismissed by order dated 4-10-2021.
3.	Relief and cost(s) which the election petitioner is entitled for ?	Election petitioner is not entitled for any relief as per paragraph 42 of this judgment.
5.	In order to prove her case that her nomination papers were improperly rejected by the Returning Officer, though the election petitioner has entered into the witness box as PW-1, but she has not filed her affidavit under order 18 Rule 4 of the CPC and only in her examination-in-chief before the Court, she has exhibited documents Exhibits P-1 to P-5, P-6A & P-6B. When the evidence of the election petitioner commenced on 10-9-2021, learned counsel for respondent No. 1 has filed an application under Order 18 rule 4 of the CPC that the election petitioner has not filed her affidavit under Order 18 Rule 4 of the CPC, therefore, she is not entitled to record her evidence and prayed for a direction to the election petitioner to comply with the mandatory statutory provisions contained in Order 18 Rule 4 of the CPC while proceeding with examination/evidence of herself and/or her witnesses on which the order was reserved and to be considered at the time of final hearing/order.	
6.	Since the election petitioner did not choose to file affidavit under Order 18 Rule 4 of the CPC before commencement of trial of election petition and only choose to enter the witness box to prove the documents vide Exhibits P-1 to P-5, P-6A & P-6B, it is the choice of the election petitioner to file or not to file affidavit under Order 18 Rule 4 of the CPC, but she cannot be compelled to do so as she had already entered the witness box on 10-9-2021 and she has been extensively cross-examined by and on behalf of respondent No. 1. As such, this application I.A. No. 12/2021 is accordingly disposed of.	
7.	Similarly, learned counsel for respondent No. 1 raised a strong objection that the documents Exhibits P-1 to P-6, P-6A & P-6B are inadmissible in evidence and the election petitioner cannot prove those documents. Documents Exhibits P-1 to P-6, P-6A & P-6B are public documents and certified copies of which have been produced before the court at the instance of the election petitioner and which have been marked as exhibits. It is well settled law that mere marking of a document as an exhibit does not dispense with the proof of the document (See Sait Tarajee Khimchand and others V. Yelamarti Satyam and others <sup>1</sup> ). Therefore, the objection raised on behalf of respondent No. 1 in this regard is hereby rejected.	
8.	In order to prove her case, the election petitioner examined herself as PW-1 and has produced documents Exhibits P-1 to P-5, P-6A & P-6B on 10-09-2021. Similarly, in opposition, though respondent No. 1 did not enter into the witness box, his election agent namely, Om Sagar Patel (DW-1) has entered into the witness box and Returning Officer Ashok Kumar Marbal has been examined as DW-2. Respondent No. 1 has brought documents Exhibits D-1 to D-8 on record. Ashok Kumar Marbal (DW-2) - Returning Officer has proved his signature on Exhibits P-4, P-6A & P-6B and also stated that he has rejected the nomination papers vide Exhibits P-6A & P-6B by order dated 3-11-2018.	
9.	<b>Submissions on behalf of the parties :—</b>	
	9.1) Mr. Manohar Lal Sharma, learned counsel appearing on behalf of the election petitioner, would submit as under :—	
	1. <b>The Returning Officer</b> — respondent No. 10 herein (deleted) has acted in improper manner firstly, by examining the nomination paper at the time of submission (before the date of scrutiny) and directed for submission of documents regarding Government service vide Exhibit P-4 and secondly, by rejecting both the nomination papers on the same date on the ground of the election petitioner being in Government service and has not filed documents showing resignation or otherwise, particularly when the election petitioner in her first nomination, has not said that she is a holder of the office of profit, as such, her nomination papers were improperly rejected.	

2. The election petitioner was not in Government service as Rural Health Officer (Female) at the relevant point of time as her services were terminated on the pressure applied by Jindal company and she is not in service from 1-8-2016 to 2-11-2018 and she was not holding the office of profit as she has clearly stated in the affidavit filed before the Returning Officer vide Exhibit P-5 on 2-11-2018. The order of the Returning Officer vide Exhibits P-6A & P-6B was totally a wrong and perverse order and is violative of Article 21 of the Constitution of India and is also violative of Sections 30, 35 & 36 of the Act of 1951. The election petitioner was never holding any office of profit and she has been terminated and is covered by Section 25F of the Industrial Disputes Act, 1947, and relied upon the following judgments of the Supreme Court and other High Courts :—

1. Mohinder Singh Gill and another V. The Chief Election Commissioner, New Delhi and others<sup>2</sup> (Supreme Court).
2. Bangalore Water-Supply & Sewerage Board, etc. V. R. Rajappa and others<sup>3</sup> (Supreme Court).
3. The Divisional Forest Manager v. Shri Vinayak Kume<sup>4</sup> (Bombay High Court).
4. State of Rajasthan and other v. Harish Chandra Sharma and others<sup>5</sup> (Rajasthan High Court).
5. Mukundbhi Mangaldas Shrimali v. State of Gujarat<sup>6</sup> (Gujarat High Court).

9.2) Mr. B. P. Sharma and Mr. Hari Agrawal, learned counsel appearing for respondent No. 1, would submit that the Returning Officer has acted as per the directions contained in the Handbook for Returning Officer 2018 issued by the State Election Commission, which provides that he shall take decision by conducting preliminary examination of nomination papers immediately upon receiving the same and asking for submission of relevant documents relating to Government service. Thus, as per the directions/instructions, the Returning Officer has to scrutinize all the nomination papers together in view of the provisions contained in clause 6.5 of the aforesaid Handbook and as such, both the nomination papers were rightly rejected by the Returning Officer on 3-11-2018 vide Exhibits P-6A & P-6B, Since the election petitioner was in Government service, Rule 5 of the Chhattisgarh Civil Services (Conduct) Rules, 1965, bars a Government servant to take part in an election to the legislature or the local authority. Similarly, unless an express order after departmental enquiry is passed, merely on account of absence from duty after expiry of leave, it cannot be presumed that her services have been terminated in view of Rule 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977. It was also submitted that since the election petitioner was admittedly in Government service and she was holding the office of profit in terms of Article 191(1)(a) of the Constitution of India, she was disqualified from contesting election and being chosen as a Member of Legislative Assembly and as such, her nomination papers were rightly rejected by the Returning Officer and thus, the election petition deserves to be dismissed.

10. Except respondent No. 1 other respondents have not chosen to appear and contest the election petition and no written statement was filed on their behalf, as such, they have been proceeded ex parte in this election petition.
11. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

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2 AIR 1978 SC 851

3 AIR 1978 SC 548

4 W.P. No. 3208/2011, decided on 27-9-2011

5 RLW 2006 (4) Raj 3028

6 Special Civil Application No. 11028/2001, decided on 30-6-2016



12. **Reasons for finding on issues :—**

**Issue No. 1 :—** For the sake of convenience, issue No. 1 is divided in two parts in the following manner :—

1. Whether, on the date of filing nomination papers vide Exhibits P-1 & P-2, the election petitioner was in Government service in the Department of Health, as Rural Health Officer (Female) under the State of Chhattisgarh and as such, the Returning Officer - respondent No. 10 herein (deleted) was justified in rejecting her nomination papers on the ground of she being in Government service by taking both the nomination papers simultaneously ?

**and/or**

2. Whether, the election petitioner was disqualified for being chosen as a Member of Legislative Assembly on account of her holding the post of RHO (F) under the Government of Chhattisgarh being an office of profit and therefore in terms of Article 191(1)(a) of the Constitution of India disqualified from being chosen as a Member of Legislative Assembly ?
13. The election petitioner being an elector for Legislative Assembly Constituency No. 15 Lailunga (ST), District Raigarh, in order to contest election from the said constituency submitted her first nomination paper to the Returning Officer vide Exhibit P-1 on 31-10-2018 in which in Part 3A, para (2), she has clearly stated that she is not holding any office of profit either under the state Government or under the Union of India and thereafter, she submitted second nomination paper vide Exhibit P-2 on 1-11-2018 at 2.45 p.m. clearly stating in Part 3A, para (2), that she was holding the office of profit as Rural Health Officer (Female) in the Department of Health, but on account of her long absence, her joining has not been accepted and for last two years, she has not been allowed to work in the district office. The Returning Officer vide Exhibit P-3 after Preliminary examination on 1-11-2018 at 3.12 p.m. issued document Exhibit P-4 directing the election petitioner to produce documents qua her Government service by 2-11-2018 till 3p.m. in compliance of Exhibit P-4, the election petitioner filed affidavit Exhibit P-5 in which she has stated that from 8-8-2002 to 31-7-2016, she was in regular Government service as RHO (F) in Sub-Health Centre, Kurrog & Bahirkela; Community Health Centre, Tamnar, and Primary Health Centre, Saraipali, and she was on leave from 28-7-2016 to 31-7-2016, but thereafter, she has not been allowed to join, and finally, in paragraph 10, she has concluded that from 1-8-2016 to 2-11-2018, for two years, she is not in Government service and under the pressure of Jindal company, her services have been terminated and she is not holding office either under the Central or State Government. The election petitioner has filed documents in nine pages along with the affidavit which have been produced and exhibited by respondent No. 1 and Proved by the election petitioner vide Exhibits D-1 to D-8. On receipt of documents Exhibit P-5 and Exhibits D-1 to D-8, the Returning Officer vide Exhibits P-6A & P-6B, rejected both the nomination papers, as the election petitioner herself has admitted being in Government service but she has not produced any document of resignation demonstrating that her resignation has been accepted by the competent authority within the time limit fixed and accordingly, proceeded to reject the nominations vide Exhibits P-6A & P-6B and thereafter, the election as scheduled was held in which respondent No. 1 has been declared elected which is sought to be challenged by the petitioner on the sole ground that her nomination papers have been improperly rejected by the Returning Officer.
14. The first and foremost objection that has been taken on behalf of the election petitioner is that both the nomination papers Exhibits P-1 & P-2 were considered and rejected simultaneously, they ought to have been considered separately it is the case of the petitioner that the Returning Officer made preliminary examination of her first nomination paper and directed her to file second nomination paper, and under the threat of rejection of her first nomination paper, she has filed the second nomination paper.
15. Mr. Ashok Kumar Marbal, who at the relevant point of time functioned as Returning Officer, has been examined as DW-2. In his evidence before the Court, he has clearly stated that following the procedure prescribed in the Handbook for Returning Officer 2018 issued by the State Election Commission and the procedure prescribed for scrutiny of nomination papers and upon preliminary examination as prescribed in clause 5.11.1 and in view of the fact that the petitioner herself having stated in Exhibit P-2 that she is holding the office of profit being RHO (F) in the Department of Health and her joining has not been accepted on account of long absence, Exhibit P-4 was issued to her in the format prescribed in the said Handbook to which the petitioner has submitted reply in shape of affidavit Exhibit P-5 and as per the procedure contained in clause 6.5 of the aforesaid Handbook, both the nomination papers have scrutinized simultaneously.

16. In order to decide the said plea, it would be appropriate to notice clause 6.5.1. of the Handbook for Returning Officer 2018 contained in clause 6.5. which provides for Scrutinization of all nomination papers. Clause 6.5.1. states as under :—

**“6.5. All Nomination Papers to be Scrutinized**

6.5.1. Returning Officer should then take up nomination papers one after another and scrutinize them, If more than one nomination paper has been presented by or on behalf of one candidate, he/she should take them up together and scrutinize them one after another. It would not be correct or legal to pass over other nomination papers of a candidate without scrutiny, merely because one or more nomination papers of that candidate have been already found valid by the Returning Officer.”

17. A careful perusal of the aforesaid provision would show that if more than one nomination paper has been presented by or on behalf of one candidate, all nomination papers have to be taken together and have to be scrutinized one after another, meaning thereby, all the nomination papers have to be taken together and they are not supposed to be decided separately. In the instant case, since the election petitioner has filed two nomination papers vide Exhibits P-1 & P-2 for contesting the election in Lailunga Assembly Constituency No. 15 (ST), both the nomination papers were considered together by the Returning Officer and in view of reply made by the petitioner in Part 3A, para (2) of Exhibit P-2 that she was holding the office of profit but she has not been allowed to join, Exhibit P-4 was issued to the petitioner and thereafter, considering her affidavit Exhibit P-5, both the nomination papers were rejected vide Exhibits P-6A & P-6B. As such, the Returning Officer has rightly followed the procedure and rightly took-up the nomination papers Exhibits P-1 & P-2 together and rightly considered the same together as per the procedure prescribed by considering the two nomination papers filed by one candidate and thus, no objection could have been taken in that respect that both the nomination papers could have been decided separately. The procedure followed by the Returning Officer in considering both the nomination papers simultaneously is in accordance with clause 6.5, of the Handbook for Returning Officer 2018 and otherwise also, it is established practice to consider the two nomination papers of one candidate together, which cannot be said to be erroneous or illegal in law. I do not find any merit in the contention raised by learned counsel for the petitioner that both the nomination papers could not have been considered simultaneously at the time of scrutiny and therefore the nomination paper Exhibit P-1 could have been rejected as there was no objection in that regard.
18. It is the case of the election petitioner that though she was holding the post of Rural Health Officer (Female) in the Department of Health as a regular Government servant from 8-8-2002 to 31-7-2016 and she remained on leave from 28-7-2016 to 31-7-2016, but thereafter, when she submitted letter dated 5-11-2016 for joining, it was not accepted and number of letters vide Exhibits D-1 to D-3 were submitted by her for joining and finally, she was given a letter by the Block Medical Officer, Tamnar to obtain permission from the Chief Medical & Health Officer, Distt. Raigarh to join in the Government service, vide Exhibit D-4, thereafter, she also submitted letters to the CMHO, Distt. Raigarh, vide Exhibit D-5 to D-8, but she was not allowed to join in service and thus, she is not in Government service from 1-8-2016 to 2-11-2018 and as such, her services have been terminated on the pressure of Jindal company and she is not holding any office of profit under the State or the Central Government. Document Exhibit P-2 is the document of the election petitioner herself in which she has stated in Part 3A, para (2), as under :—

भाग 3क  
(अभ्यर्थी द्वारा भरा जाए)

(1)   xxx     xxx     xxx  
       xxx     xxx     xxx  
       xxx     xxx     xxx

- (2) क्या अभ्यर्थी भारत सरकार या राज्य सरकार के अधीन कोई लाभ का पद धारण कर रहा है ? स्वा. विभाग (R.H.O.F.) (हां/नहीं).  
 यदि हां, धारित पद के ब्यौरे लंबे समय से अनुपस्थित रहने के कारण विभाग ने मेरी उपस्थिति मान्य नहीं की 2 वर्षों से मुझे जिला कार्यालय से कार्य में उपस्थित होने की अनुमति नहीं दी गई है.

19. It is appropriate to mention here that Exhibit P-2 is the document of the election petitioner herself and in her cross-examination, paragraph 5, she has clearly stated the aforesaid fact to be correct. Similarly in the affidavit submitted by her before the Returning Officer (Exhibit P-5), she has specifically stated that she was in Government service from 8-8-2002 to 31-7-2016 as RHO (F) in Sub-Health Centre, Kurrog & Bahirkela, Community Health Centre, Tamnar; and Primary Health Centre, Saraipali. As such, the fact of the election petitioner being a Government servant on the date of nomination is not in dispute. What she has stated in Exhibit P-2, in Part 3A, para (2) as well as in Exhibit P-5 is that she was not allowed to join despite several letters Exhibits D-1 to D-3 & D-5 to D-8 and no departmental enquiry was held against her and she is not in Government service from 1-8-2016 to 2-11-2018 for last two years and on the pressure of Jindal company, her services have been terminated and she is not holding the office of profit and same amounts to oral termination of service.
20. As such, it is duly established from the aforesaid facts that the election petitioner was appointed as regular Government servant in the Department of Health as RHO (F) in August, 2008, she was a regular Government servant and she continued on the post up to 31-7-2016. On 28-7-2016, she proceeded on leave up to 31-7-2016, but thereafter, on 5-11-2016, it is her case that she was not allowed to join in the Government service which is apparent from Exhibit D-1 to D-3 and vide Exhibit D-4, the Block Medical Officer, Tamnar asked her to seek permission from the CMHO, Distt. Raigarh which she submitted asking for her joining vide Exhibit D-5 to D-8, but she was not permitted to join. As such it is a case of absence from service after expiry of leave.
21. Rule 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977 (for short, 'the Rules of 1977') provides the consequence of absence from duty after expiry of leave. It states as under :—
- “24. **Absence after expiry of leave.—**
- (1) Unless the authority competent to grant leave extends the leave, Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.
- (2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.”
22. A careful perusal of the aforesaid rule would show that in case of long absence or remaining absent after the end of leave without grant by the competent authority, the Government servant is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account. Similarly, by virtue of sub-rule (2) of Rule 24 of the Rules of 1977, willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action. Pursuant to the departmental proceeding, a Government servant can be inflicted the penalties set-out in Rule 10 of the Rules of 1966 which can be minor penalties as well as major penalties and which rests exclusively within the jurisdiction and domain of the disciplinary authority. However, in view of Rule 24(2) of the Rules of 1977, long absence after expiry of leave will not amount to automatic termination of service as for termination of service there has to be a departmental enquiry in case of regular Government servant in accordance with the Rules of 1966 and penalty of termination can be inflicted as major penalty after recording a finding of grave misconduct, except in cases covered by 2nd proviso to sub-clause(2) of Article 311 of the Constitution of India, where the authority empowered to dismiss or remove/reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.
23. Admittedly, in the present case, on the own showing of the election petitioner vide Exhibit P-5 in paragraph 9, it has clearly been stated that no departmental enquiry was instituted against her and as such, there is no order of termination passed against her. The petitioner has only stated in paragraph 10 of Exhibit P-5 that she is not in Government service with effect from 1-8-2016 to the date of scrutiny i.e. 2-11-2018 and her services have been terminated that too on the pressure of Jindal company and she is not holding any office of profit which the Returning Officer did not accept holding that since the petitioner is in regular government servant and she has not produced the order of termination or letter of resignation within the time limit given by him, therefore, in that view of the matter, her nomination papers are rejected. and thus, the Returning officer did not accept the fact of oral termination from service claimed by the election petitioner.

24. At this stage, it would be extremely relevant to notice Rule 5 of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (for short, the Rules of 1965') by which the Government servants are barred from participating in the election of any legislature or local authority. Sub-rule (4) of Rule 5 of the Rules of 1965 states as under :—

“5. **Taking part in politics and elections.**— (1) to (3) XXX XXX

- (4) No Government servant shall canvas or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority :

**Provided that —**

- (i) a Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted ;
- (ii) a Government servant shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the due performance or a duty imposed on him by or under any law for the time being in force.

**Explanation.**— The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule.”

25. A focused glance of the aforesaid provision would show that the legislature has designedly thought it expedient to restrain/injunct the government servant either to canvas or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority. The legislative object of enacting such rule is that the status enjoyed by the candidates shall not be allowed to be prejudicial vis-a-vis candidates who do not enjoy such a status. As such, the election petitioner being a regular Government servant on the date of filing nomination was by virtue of Rule 5(4) of the Rules of 1965 specifically prohibited from taking part in the election to the legislature, as the said provision is imperative in nature being the legislative injunction restraining the Government servant from taking part in election to any legislature or local authority, in any manner whatsoever.

26. In the matter of Chet Ram V. Jit Singh<sup>7</sup>, the Supreme Court considered rule 22(4) of the Department of Posts, Gramin Dak Sewak (Conduct and Employment) Rules, 2001 which contained prohibition against taking part in election to any legislative or local authority and held that since there is a specific prohibition in statutory rules against taking part in elections of legislative assembly or local authority, the candidate is disqualified from contesting in the election. It has been observed in paragraph 9 of the report as under :—

“9. Indisputably, the terms and conditions of a Gramin Dak Sewak are governed by the provisions of the Rules ;

sub-rule (4) of Rule 22 whereof reads as under :

“22. (4) No Sevak shall canvass or otherwise interfere with or use his influence in connection with, or take part in an election to any legislative or local authority.”

The said Rules were framed in terms of proviso appended to Article 309 of the Constitution of India. The terms and conditions of employment of a Gramin Dak Sewak are governed by statutory rules. The Rules framed in terms of the proviso appended to Article 309 of the Constitution of India indisputably govern only government employees. It was, therefore, for appellant to show that he was not governed by the Rules.”

27. Since the election petitioner was specifically prohibited by sub-rule (4) of Rule 5 of the Rules of 1965 from taking part in election and the said rule is statutory in nature, the petitioner contested the election in direct conflict with specific prohibition contained in the above-stated rule applicable to her.
28. In view of the above-stated finding, the plea of termination advanced by learned counsel for the petitioner has no force and accordingly it is rejected. Similarly, the judgments cited by Mr. Manohar Lal Sharma, learned counsel, are clearly inapplicable and distinguishable to the facts of the present case.
29. Now, the question for consideration is, whether the election petitioner was disqualified for being chosen as Member of Legislative Assembly on account of her holding the office of profit under the Government of Chhattisgarh ?
30. In order to adjudicate the plea, it would be appropriate to notice the provision contained in Article 191 (1)(a) of the Constitution of India which states as under :—
- “191. **Disqualifications for membership.**— (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State —
- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder,”
31. The principal contained in Article 191 of the Constitution of India is based on sound public policy of ensuing impartiality and neutrality in public service and avoidance of conflict between duty and interest of an elected member enabling him to carry on his duties, freely and fearlessly without being subjected to any governmental pressure thereby maintaining purity of legislature. The object of said provision Article 191 (1)(a) of the Constitution is to disqualify a person from membership of legislature, if he/she is obliged to the Government for an office which carries benefit or profit and thus, compromising his/her independence.
32. An ‘office of profit’ is an office which is capable of yielding a profit or pecuniary gain. In order to be an office of profit, the office must carry various pecuniary benefits or must be capable of yielding pecuniary benefits such as providing for official accommodation or even a chauffeur driven car. Holding an office the Central or state Government to which some pay, salary emolument, remuneration or non-compensatory allowance are attached is “holding an office of profit”. The question whether a person holds an office of profit is required to be interpreted in a realistic manner.
33. For deciding the question as to whether one is holding an office of profit or not, what is relevant is, whether the office is capable of “yielding” a profit or “pecuniary gain” and not whether the person actually obtained monetary gain. If the ‘pecuniary’ gain is receivable in connection with the office, then it becomes an office of profit, irrespective of the fact whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit. (See *Jaya Bachchan V. Union of India*<sup>8</sup>.)
34. The Supreme Court in the matter of *Shivamurthy Swami Inamdar V. Agadi Sanganna Andanappa*<sup>9</sup> while taking into consideration its earlier decision in the matter of *Ravanna Subanna v. G. S. Kaggeerappa*<sup>10</sup> laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. It has been observed by their Lordships of the Supreme Court in *Shivamurthy Swami Inamdar* (supra) as under :—
- “14. Therefore before the provisions of that Article can be attracted, it must be established that he was holding an office under the Union or the State Government and that that office was an office of profit and thereafter we must see whether the disqualification relating to that office has been removed by any Parliamentary legislation. In other words, the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. The word ‘profit’ connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount

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8 AIR 2006 SC 2119

9 1971 (3) SCC 870

10 AIR 1954 SC 653

would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit-see *Revenna Subanna v. G. S. Kaggerappa* (AIR 1954 SC 653). This Court in several decisions has laid down the tests for finding out whether an office in question is an office under a government and whether it is an office of profit. Those tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) what are the functions of the holder? Does he perform them for the Government and (5) Does the Government exercise any control over the performance of those functions? see *abdul Shakur v. Rikhab Chand*<sup>11</sup>; *Ramappa v. Sangappa*<sup>12</sup>; and *Govinda Basu v. Sankari Prasad*<sup>13</sup>. .....

35. Similarly, in the matter of *Biharilal Dobray v. Roshan Lal Dobray*<sup>14</sup>, the Supreme Court while considering the earlier decisions and highlighting the object of enacting Article 191(1)(a) of the Constitution of India, held in paragraph 5 as under :—

“5. The object of enacting Article 191 (1) (a) is plain. A person who is elected to a Legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office, there is every likelihood of such person succumbing to the wishes of Government. Article 191 (1)(a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the Legislatures. The term “office of profit under the Government” used in the above clause though indeterminate is an expression of wider import than a post held under the Government which is dealt with in Part XIV of the Constitution. For holding an office of profit under the Government a person need not be in the service of the Government and there need not be any relationship of master and servant between them. An office of profit involves two elements, namely, that there should be an office and that it should carry some remuneration. In order to determine whether a person holds an office of profit under the Government several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder of the office, whether the Government pays the remuneration, whether the functions performed by the holder are carried on by him for the Government and whether the Government has control over the duties and functions of the holder. Whether an office in order to be characterised as an office of profit under the Government should satisfy all these tests or whether any one or more of them may be decisive of its true nature has been the subject matter of several cases decided by this Court but no decision appears to lay down conclusively the characteristics of an office of profit under the Government although the Court has no doubt determined in each case whether the particular office involved in it was such an office or not having regard to its features.”

36. Similarly, in the matter of *Satrucharla Chandrasekhar Raju v. Vyrichertla Pradeep Kumar Dev and another*<sup>15</sup>, again the Supreme Court set-out some of the tests/principles for determining whether a person holds an office of profit under the Government and summarized the legal principles in paragraphs 11 and 18 as under :—

“11. On a careful examination of the ratio laid down in the above-mentioned cases some of the tests or principles that emerge for determining whether a person holds an office of profit under the Government, may be summarised thus:

“(1) The power of the Government to appoints a person in office or to revoke his appointment at its discretion. The mere control of the Government over the authority having the power to appoints, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature.

11 1958 SCR 387  
 12 1959 SCR 1167  
 13 (1964) 4 SCR 311  
 14 (1984) 1 SCC 551  
 15 (1992) 4 SCC 404

- (2) The payment from out of the Government revenues are important factors in determining whether a person is holding an office of profit or not of the Government. Though payment form a source other than the Government revenue is not always a decisive factor.
  - (3) The incorporation of a body corporate and entrusting the functions to it by the Government may suggest that the statute intended it to be a statutory corporation independent of the Government. But it is not conclusive on the question whether it is really so independent. Sometimes, the form may be that of a body corporate independent of the Government, but in substance, it may just be the alter ego of the Government itself.
  - (4) The true test of determination of the said question depends upon the degree of control the Government has over it, the extent of control exercised by very other bodies or committees, and its composition, the degree of its dependence on the Government for its financial needs and the functional aspect, namely, whether the body is discharging any important Governmental function or just some function which is merely optional from the points of view of the Government.”
18. Articles 102(1)(a) and 191(1)(a) are incorporated in order to eliminate or reduce the risk of conflict between the duty and interest amongst the members of the Legislature and to ensure that the Legislature does not contain persons who have received benefits from the Executive and who consequently being under an obligation might be amenable to its influence. Therefore this object must be borne in mind in interpreting these Articles. It is in this context the words “under the Government” so far as the present case is concerned, become more relevant and should be examined from that perspective keeping in view the necessary power to appoint or remove.”
37. In the matter of Shibu Soren v. Dayanand Sahay and others<sup>16</sup>, the Supreme Court took under review the earlier decisions on the point and observed in paragraphs 24, 25, 26 and 27 as under :—
- “24. In *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*, (1992) 4 SCC 404, the appellant had been appointed as a single teacher in a primary school by the Project officer of the Integrated Tribal Development Agency (ITDA). The High Court held that the appellant was holding an “office of profit” and had, thus, incurred a disqualification envisaged by Article 191(1)(a) of the Constitution. Setting aside the order of the High Court, and allowing the appeal it was held by this Court: SCC p. 428-29, para 29
- “29. What emerges from the above discussion is that the Government has some control over the ITDA which is set up as a project, since it provides funds and sanctions the posts; the District Collector is appointed as Project Officer and some officers are ex officio members of the ITDA which carries out the object of providing compulsory education in tribal areas. But the ITDA is a registered society having its own constitution. Though the Project Officer is the District Collector, he acts as a different entity. The power to appoint or to remove teachers is not with the Government but with the Project Officer. The Government may have control over the appointing authority but has no direct control over the teachers. The small post that appellant holds in ITDA is only that of a teacher who is directly under the control of the Project Officer. In such a situation the question of any conflict between his duties and interests as an elected member does not arise since it cannot be said that he, as a teacher, can be subjected to any kind of pressure by the Government which has neither the power to appoint him nor to remove him from service. Taking a practical view of the substance of these factors into consideration, we are of the view that the appellant cannot be held to be holding an office of profit under the Government”.

(emphasis supplied)

25. From a resume of precedents noticed above we find that in order to attract disqualification contained in Article 102(1)(a), a person must not only be holding “an officer” but that office must be “an office of profit” and should be “under the Government” and should be an office other than an office declared by the competent legislature by law not to disqualify its holder. The first question which comes to the fore, therefore is as to when can a person be said to be “holding an office of profit” under the Government.
  26. The expression “office of profit” has not been defined either in the Constitution or in the Representation of the People Act. In common parlance, the expression “profit” connotes an idea of some pecuniary gain. If there is really some gain, its label — “honorarium” — “remuneration” — “Salary” is not material — it is the substance and not the form which matters and even the quantum or amount of “pecuniary gain” is not relevant — what needs to be found out is whether the amount of money receivable by the person concerned in connection with the office he holds, gives to him some “Pecuniary gain”, other than as “compensation” to defray his out-of-pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him.
  27. With a view to determine whether the office concerned is an “office of profit”, the court must, however, take a realistic view. Taking a broad or general view, ignoring essential details is not desirable nor is it permissible to take a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the object of the enactment. Courts, therefore, while construing a statute avoid strict construction by construing the entire Act. (See with advantage *Ashok Kumar Bhattacharyya v. Ajoy Biswas*<sup>17</sup>, *Tinsukhia Electric supply Co. Ltd. v. State of Assam*<sup>18</sup>, and *CIT v. J.H. Gotla*<sup>19</sup>.)”
38. In *Jaya Bachchan* (supra), the Supreme Court has considered clause (1) (a) of Article 102 of the Constitution of India, which is *pari materia* to Article 191 (1) (a) of the Constitution, and following the earlier decisions, held as under :—
- “6. Clause (1) (a) of Article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The term “holds an office of profit” though not defined, has been the subject-matter of interpretation, in several decisions of this Court. An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is “holding an office of profit”. The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form, Nomenclature is not important. In fact, mere use of the word “honorarium” cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the “pecuniary gain” is “receivable” in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a). This position of law stands settled for over half a century commencing from the decisions of *Ravanna Subanna v. G.S. Kaggeerappa*, AIR (1954) SC 653; *Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa*, (1971) 3 SCC 870; *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev.* (1992) 4 SCC 404 and *Shibu Soren v. Dayanand Sahay*, (2001) 7 SCC 425.”

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17 (1985) 1 SCC 151

18 (1989) 3 SCC 709

19 (1985) 4 SCC 343



39. In the matter of State Election Commissioner, Bihar, Patna and others v. Janakdhari Prasad and others<sup>20</sup>, the Supreme Court has held that the nature of disqualification has to be strictly construed keeping in mind that right to contest an election is not a fundamental right out the said right may be curtailed under valid statutory provision.
40. Finally, in the matter of Narayan Dinbaji Jambhule v. Dr. Deorao Madguji Holi and others<sup>21</sup>, the Bombay High Court in facts similar to the case in hand held that respondent No. 5 therein who was employed as Medical Officer, in Class-II, Group "A" Services and was in employment of State Government on the day on which he submitted nomination for Assembly Elections, held office of profit as contemplated by Article 191 (1) (a) of the Constitution of India and thus, he stands disqualified to be chosen as member of Legislative Assembly as per Article 191(1)(a) of the Constitution and Section 100(1)(a) of the Act of 1951 and quashed the election of the returned candidate (respondent No. 5) holding that he was not qualified to be chosen as a member of Legislative Assembly.
41. Reverting to the facts of the present case in the light of the aforesaid legal proposition flowing from the decisions rendered by the Supreme Court and the Bombay High Court in Narayan Dinbaji Jambhule (supra), it is quite vivid that the election petitioner being Rural Health Officer (Female) and thereby a regular Government servant on the roll of the State Government on the date on which she submitted nomination paper for assembly election, and though on the date of submission of nomination paper, she was not actually working on account of her joining not being accepted by the competent authority, but she was admittedly, a Government servant who was entitled to draw, salary and allowances, as such, was holding the office of profit and therefore disqualified from being chosen as a member of Legislative Assembly and therefore the Returning Officer is justified in rejecting her nomination papers vide Exhibits P-6A & P-6B. The election petitioner has failed to demonstrate that her nomination papers were improperly rejected by the Returning Officer within the meaning of Section 100(1)(c) of the Act of 1951.

**Relief and cost :—**

42. As a fallout and consequence of the aforesaid discussion, the election petition deserves to be and is accordingly dismissed. in the facts and circumstances of the case, parties shall bear their own cost(s).
43. A copy of this order be sent to the State Election Commission forthwith as required by Section 103 of the Act of 1951.

Sd/-  
SANJAY K. AGRAWAL,  
Election Judge.

By order,

Sd/-  
(NARENDRA N. BUTOLIA)  
Senior Principal Secretary,  
Election Commission of India.

रायपुर, दिनांक 30 मई 2022

क्र. 21/चार/निरर्हित/2018-22/1937.—छत्तीसगढ़ राज्य के विधानसभा निर्वाचन-2018 के दौरान निर्वाचन लड़ने वाले अभ्यर्थी द्वारा लेखा दाखिल करने में असफल रहे श्री धनेश कुमार मैरिसा एवं पुरन लाल बघेल, जिला-रायपुर को तीन वर्ष की कालावधि के लिये निरर्हित घोषित किये जाने संबंधी भारत निर्वाचन आयोग, नई दिल्ली के आदेश संख्या छ.ग.-वि.स./पूर्व अनु.-1/47/2018, दिनांक 17 मई, 2022 सर्व साधारण की जानकारी हेतु प्रकाशित की जाती है।

( भुवनेश यादव )  
मुख्य निर्वाचन पदाधिकारी.

## भारत निर्वाचन आयोग

### निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

नई दिल्ली, दिनांक 17 मई, 2022—27 वैशाख, 1944 (शक)

सं. छ.ग./वि.स./पूर्व अनु.-1/47/2018.—यतः भारत निर्वाचन आयोग द्वारा छत्तीसगढ़ राज्य से विधान सभा का साधारण निर्वाचन 2018 की घोषणा प्रेस नोट संख्या ईसीआई/प्रे.नो./66/2018 दिनांक 6 अक्टूबर, 2018 के जरिए की गई थी। कार्यक्रम के अनुसार, मतगणना की तारीख 11 दिसम्बर, 2018 थी।

और यतः, लोक प्रतिनिधित्व अधिनियम, 1917 की धारा 78 के अनुसार, निर्वाचन लड़ने वाले प्रत्येक अभ्यर्थी को, निर्वाचित अभ्यर्थी के निर्वाचन की तारीख से 30 दिनों के भीतर निर्वाचन व्यय के अपने लेखे की सही प्रति जिला निर्वाचन अधिकारी को दाखिल करनी होती है

और यतः, 47-धरसीवां विधान सभा निर्वाचन क्षेत्र सहित संबंधित रिटर्निंग अधिकारी द्वारा उक्त निर्वाचन के परिणाम 11 दिसम्बर, 2018 को घोषित किए गए थे। इस प्रकार, निर्वाचन व्यय के लेखे दाखिल करने की अन्तिम तारीख 10 जनवरी, 2019 थी;

और यतः, जिला निर्वाचन अधिकारी, रायपुर छत्तीसगढ़ द्वारा प्रस्तुत और मुख्य निर्वाचन अधिकारी, छत्तीसगढ़ द्वारा अपने दिनांक 29 जनवरी, 2019 के पत्र सं. 21/चार/वि.स.चु./ई.ई.एम./2019/85 के जरिए अग्रेषित दिनांक 11 जनवरी, 2019 की रिपोर्ट के अनुसार श्री धनेश कुमार मैरिसा जो छत्तीसगढ़ के 47-धरसीवां विधान सभा निर्वाचन क्षेत्र से निर्वाचन लड़ने वाले अंबेडकराईट पार्टी आफ इण्डिया के अभ्यर्थी हैं, विधि द्वारा यथापेक्षित रीति से अपने निर्वाचन व्यय का कोई भी लेखा दाखिल करने में विफल रहे हैं।

और यतः, जिला निर्वाचन अधिकारी, रायपुर छत्तीसगढ़ और मुख्य निर्वाचन अधिकारी, छत्तीसगढ़ की रिपोर्ट के आधार पर भारत निर्वाचन आयोग द्वारा निर्वाचनों का संचालन नियम 1961 के नियम 89 के उप नियम (5) के अंतर्गत निर्वाचन व्यय प्रस्तुत नहीं करने के लिए श्री धनेश कुमार मैरिसा को कारण बताओ नोटिस दिनांक 10 फरवरी, 2020 को जारी किया गया था;

और यतः, निर्वाचनों का संचालन नियम 1961 के नियम 89 के उप-नियम (6) के अनुसार, दिनांक 10 फरवरी, 2020 के उपयुक्त कारण बताओ नोटिस के जरिए श्री धनेश कुमार मैरिसा को निर्देश दिया गया था कि वे इस नोटिस के प्राप्त होने के 20 दिनों के अंदर लेखे न प्रस्तुत कर पाने के कारणों को स्पष्ट करते हुए लिखित रूप में अपना अभ्यावेदन प्रस्तुत करें और साथ ही, निर्वाचन व्यय का अपना लेखा दाखिल करें;

और यतः, उक्त नोटिस श्री धनेश कुमार मैरिसा द्वारा दिनांक 20 फरवरी, 2020 को प्राप्त किया था। पावती रसीद जिला निर्वाचन अधिकारी, रायपुर द्वारा अपने दिनांक 27 फरवरी, 2020 के पत्र सं. 7364/निर्वा./नि.प./2020 के जरिए आयोग को प्रस्तुत कर दी गई है;

और यतः, जिला निर्वाचन अधिकारी, रायपुर द्वारा अपने दिनांक 09 मार्च, 2022 के पत्र सं. 847/नस्ती क्रमांक 184/निर्वा./नि.प./2022 के जरिए प्रस्तुत की गई अनुपूरक रिपोर्ट में यह बताया गया है कि श्री धनेश कुमार मैरिसा ने आज की तारीख तक न तो कोई भी अभ्यावेदन और न ही अपने निर्वाचन व्यय का लेखा दाखिल किया है। इसके अतिरिक्त उन्होंने भारत निर्वाचन आयोग का सम्यक नोटिस मिलने के उपरांत भी उक्त विफलता के लिए न तो कोई कारण बताया है और न ही कोई स्पष्टीकरण दिया है;

और यतः, आयोग का यह समाधान हो गया है कि श्री धनेश कुमार मैरिसा निर्वाचन खर्चों का लेखा विधि द्वारा अपेक्षित रीति से दाखिल करने में विफल रहे हैं और उनके पास इस विफलता के लिए कोई भी उचित कारण अथवा औचित्य नहीं है,

और यतः, लोक प्रतिनिधित्व अधिनियम, 1902 की धारा 10क में अनुबंधित किया गया है कि :—

“यदि निर्वाचन आयोग का समाधान हो जाता है कि कोई व्यक्ति —

(क) निर्वाचन व्ययों का लेखा उस समय के भीतर और उस रीति में जैसी इस अधिनियम के द्वारा या अधीन उपेक्षित है, दाखिल करने में असफल रहा है; तथा

(ख) उस असफलता के लिए कोई अच्छा कारण या न्यायोचित्य नहीं रखता है,

निर्वाचन आयोग शासकीय राजपत्र में प्रकाशित आदेश द्वारा उसको निरहित घोषित करेगा और ऐसा व्यक्ति उस आदेश की तारीख से तीन साल की कालावधि के लिए निरहित होगा;

अतः, अब लोक प्रतिनिधित्व अधिनियम, 1917 की धारा 10क के अनुसरण में भारत निर्वाचन आयोग एतद्वारा घोषणा करता है कि छत्तीसगढ़ राज्य 47-धरसीवां विधान सभा निर्वाचन क्षेत्र से छत्तीसगढ़ राज्य में विधान सभा के साधारण निर्वाचन, 2018 में निर्वाचन लड़ने वाले अंबेडकराईट पार्टी आफ इण्डिया के अभ्यर्थी श्री धनेश कुमार मैरिशा, ग्राम+पो. सिलतारा, छत्तीसगढ़ को इस आदेश की तारीख से तीन साल की अवधि के लिए संसद के किसी भी सदन अथवा राज्य अथवा संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद का सदस्य चुने जाने अथवा होने के लिए निरहित है.

आदेश से,

हस्ता./-

( नरेन्द्र ना. बुटोलिया )

वरिष्ठ प्रधान सचिव,  
भारत निर्वाचन आयोग.

### ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, dated 17th May, 2022—27 Vaisakha, 1944 (Saka)

No. CG-LA/ES-I/47/2018.—WHEREAS, the General Election to Legislative Assembly of Chhattisgarh, 2018 was announced by Election Commission of India vide Press Note No. ECI/PN/66/2018 dated 6th October, 2018. As per the schedule, Date of Counting was 11th December, 2018.

AND WHEREAS, as per Section 78 of the Representation of the People Act, 1902, every contesting candidate has to lodge a true copy of his account of election expenses within 30 days with the District Election Officer, from the date of election of returned candidate;

AND WHEREAS, the result of the said election was declared by the concerned Returning Officer including 47-Dharsiwa Constituency on 11th December, 2018. As such the last date for lodging of account of election expenses was 10th January, 2019.

AND WHEREAS, as per the report dated 11th January, 2019 submitted by the District Election Officer, Raipur District, Chhattisgarh and forwarded by Chief Electoral Officer, Chhattisgarh vide letter No. 21/चार/वि.स.चु./ई.ई.एम./2019/85, dated 29th January, 2019, Sh. Dhanesh Kumar Mairisha, a contesting candidate of Ambedkarite Party of India from 47-Dharsiwa Assembly Constituency of Chhattisgarh, has failed to lodge any account of his election expenses in the manner as required by law.

AND WHEREAS, on the basis of the reports of the District Election Officer, Raipur District, Chhattisgarh and the Chief Electoral Officer, Chhattisgarh, a show Cause Notice, dated 10th February, 2020 was issued by Election Commission of India under Sub Rule (5) of Rule 89 of the Conduct of Election Rules, 1961 to Sh. Dhanesh Kumar Mairisha for non-submission of Election expenses;

AND WHEREAS, as per Sub Rule (6) of Rule 89 of the Conduct of Election Rules, 1961, through the above said Show Cause Notice, dated 10th February, 2020, Sh. Dhanesh Kumar Mairisha, was directed to submit his representation in writing in the Commission explaining the reason for non-submission of accounts and also to lodge his accounts of election expenses/rectify the defects in his accounts and submit the same the District Election Officer concerned within 20 days from the date of receipt of the notice;

AND WHEREAS, the said notice was received by Sh. Dhanesh Kumar Mairisha, on 20th February, 2020 Acknowledgment receipt obtained from the candidate have been submitted to the Commission by District Election Officer, Raipur vide his letter No. 7364/निर्वा./नि.प./2020 dated 27th February, 2020.

AND WHEREAS, in the supplementary report submitted by District Election Officer, Raipur vide his letter No. 847/नस्ती क्रमांक 184/निर्वा./नि.प./2022 dated 09th March, 2022, has stated that Sh. Dhanesh Kumar Mairisha, has not submitted any representation or his account of election expenses till date. Further, he has furnished neither any reason nor explanation for the said failure even after receipt of the due notice to the Election Commission of India as well;

AND WHEREAS, the Commission satisfied that Sh. Dhanesh Kumar Mairisha, has failed to lodge an account of election expenses and has no good reason or justification for the failure;

AND WHEREAS, Section 10A of the Representation of the people Act, 1951 Stipulates that :—

“If the Election Commission is satisfied that a person:

- (a) Has failed to lodge an account of election expenses within the time and in the manner required by law or under this Act, and
- (b) Has no good reason or justification for the failure,

Election Commission shall by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from date of the under;

NOW THEREFORE, in pursuance of Section 10A of the Representation of the People Act, 1917, the Election Commission of India hereby declares Sh. Dhanesh Kumar Mairisha, Vill-Kankidipa, P.O.-Bengachi, Tehsil-Sarangarh, Dist.-Raipur Chhattisgarh and a contesting candidate of Ambedkaraite Party of India for General Election to Legislative Assembly of Chhattisgarh, 2018 from 47-Dharsiwa Assembly Constituency of the state of Chhattisgarh to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Parliamentary or Legislative Council of a State or Union Territory for a period of three years from the date of this order.

By order,

Sd/-  
(NARENDRA N. BUTOLIA)  
Senior Principal Secretary,  
Election Commission of India.

नई दिल्ली, दिनांक 17 मई, 2022—27 वैशाख, 1944 (शक)

सं. छ.ग./वि.स./पूर्व अनु.-1/47/2018.—यतः भारत निर्वाचन आयोग द्वारा छत्तीसगढ़ राज्य से विधान सभा का साधारण निर्वाचन 2018 की घोषणा प्रेस नोट संख्या ईसीआई/प्रे.नो./66/2018 दिनांक 6 अक्टूबर, 2018 के जरिए की गई थी. कार्यक्रम के अनुसार, मतगणना की तारीख 11 दिसम्बर, 2018 थी.

और यतः, लोक प्रतिनिधित्व अधिनियम, 1917 की धारा 78 के अनुसार, निर्वाचन लड़ने वाले प्रत्येक अभ्यर्थी को, निर्वाचित अभ्यर्थी के निर्वाचन की तारीख से 30 दिनों के भीतर निर्वाचन व्यय के अपने लेखे की सही प्रति जिला निर्वाचन अधिकारी को दाखिल करनी होती है

और यतः, 47-धरसीवा विधान सभा निर्वाचन क्षेत्र सहित संबंधित रिटर्निंग अधिकारी द्वारा उक्त निर्वाचन के परिणाम 11 दिसम्बर, 2018 को घोषित किए गए थे. इस प्रकार, निर्वाचन व्यय के लेखे दाखिल करने की अन्तिम तारीख 10 जनवरी, 2019 थी;

और यतः, जिला निर्वाचन अधिकारी, रायपुर छत्तीसगढ़ द्वारा प्रस्तुत और मुख्य निर्वाचन अधिकारी, छत्तीसगढ़ द्वारा अपने दिनांक 29 जनवरी, 2019 के पत्र सं. 21/चार/वि.स.चु./ई.ई.एम./2019/85 के जरिए अग्रेषित दिनांक 11 जनवरी, 2019 की रिपोर्ट के अनुसार श्री पुरन लाल बघेल जो छत्तीसगढ़ के 47-धरसीवा विधान सभा निर्वाचन क्षेत्र से निर्वाचन लड़ने वाले निर्दलीय अभ्यर्थी हैं, विधि द्वारा यथापेक्षित रीति से अपने निर्वाचन व्यय का कोई भी लेखा दाखिल करने में विफल रहे हैं.

और यतः, जिला निर्वाचन अधिकारी, रायपुर छत्तीसगढ़ और मुख्य निर्वाचन अधिकारी, छत्तीसगढ़ की रिपोर्ट के आधार पर भारत निर्वाचन आयोग द्वारा निर्वाचनों का संचालन नियम 1961 के नियम 89 के उप नियम (5) के अंतर्गत निर्वाचन व्यय प्रस्तुत नहीं करने के लिए श्री पुरन लाल बघेल को कारण बताओ नोटिस दिनांक 10 फरवरी, 2020 को जारी किया गया था;

और यतः, निर्वाचनों का संचालन नियम 1961 के नियम 89 के उप-नियम (6) के अनुसार, दिनांक 10 फरवरी, 2020 के उपयुक्त कारण बताओ नोटिस के जरिए श्री पुरन लाल बघेल को निर्देश दिया गया था कि वे इस नोटिस के प्राप्त होने के 20 दिनों के अंदर लेखे न प्रस्तुत कर पाने के कारणों को स्पष्ट करते हुए लिखित रूप में अपना अभ्यावेदन प्रस्तुत करें और साथ ही, निर्वाचन व्यय का अपना लेखा दाखिल करें;

और यतः, उक्त नोटिस श्री पुरन लाल बघेल द्वारा दिनांक 20 फरवरी, 2020 को प्राप्त किया था. पावती रसीद जिला निर्वाचन अधिकारी, रायपुर द्वारा अपने दिनांक 27 फरवरी, 2020 के पत्र सं. 7364/निर्वा./नि.प./2020 के जरिए आयोग को प्रस्तुत कर दी गई है;

और यतः, जिला निर्वाचन अधिकारी, रायपुर द्वारा अपने दिनांक 09 मार्च, 2022 के पत्र सं. 847/नस्ती क्रमांक 184/निर्वा./नि.प./2022 के जरिए प्रस्तुत की गई अनुपूरक रिपोर्ट में यह बताया गया है कि श्री पुरन लाल बघेल ने आज की तारीख तक न तो कोई भी अभ्यावेदन और न ही अपने निर्वाचन व्यय का लेखा दाखिल किया है. इसके अतिरिक्त उन्होंने भारत निर्वाचन आयोग का सम्यक नोटिस मिलने के उपरांत भी उक्त विफलता के लिए न तो कोई कारण बताया है और न ही कोई स्पष्टीकरण दिया है;

और यतः, आयोग का यह समाधान हो गया है कि श्री पुरन लाल बघेल निर्वाचन खर्चों का लेखा विधि द्वारा अपेक्षित रीति से दाखिल करने में विफल रहे हैं और उनके पास इस विफलता के लिए कोई भी उचित कारण अथवा औचित्य नहीं है,

और यतः, लोक प्रतिनिधित्व अधिनियम, 1902 की धारा 10क में अनुबोधित किया गया है कि :—

“यदि निर्वाचन आयोग का समाधान हो जाता है कि कोई व्यक्ति —

- (क) निर्वाचन व्ययों का लेखा उस समय के भीतर और उस रीति में जैसी इस अधिनियम के द्वारा या अधीन उपेक्षित है, दाखिल करने में असफल रहा है; तथा
- (ख) उस असफलता के लिए कोई अच्छा कारण या न्यायोचित्य नहीं रखता है,

निर्वाचन आयोग शासकीय राजपत्र में प्रकाशित आदेश द्वारा उसको निरर्हित घोषित करेगा और ऐसा व्यक्ति उस आदेश की तारीख से तीन साल की कालावधि के लिए निरर्हित होगा;

अतः, अब लोक प्रतिनिधित्व अधिनियम, 1917 की धारा 10क के अनुसरण में भारत निर्वाचन आयोग एतद्वारा घोषणा करता है कि छत्तीसगढ़ राज्य 47-धरसीवां विधान सभा निर्वाचन क्षेत्र से छत्तीसगढ़ राज्य में विधान सभा के साधारण निर्वाचन, 2018 में निर्वाचन लड़ने वाले निर्दलीय अभ्यर्थी श्री पुरन लाल बघेल, ग्राम-रैता, पो.-मनोहरा, पिन-493116, छत्तीसगढ़ को इस आदेश की तारीख से तीन साल की अवधि के लिए संसद के किसी भी सदन अथवा राज्य अथवा संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद का सदस्य चुने जाने अथवा होने के लिए निरर्हित है.

आदेश से,

हस्ता./—

( नरेन्द्र ना. बुटोलिया )

वरिष्ठ प्रधान सचिव,  
भारत निर्वाचन आयोग.

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, dated 17th May, 2022—27 Vaisakha, 1944 (Saka)

No. CG-LA/ES-I/47/2018.—WHEREAS, the General Election to Legislative Assembly of Chhattisgarh, 2018 was announced by Election Commission of India vide Press Note No. ECI/PN/66/2018 dated 6th October, 2018. As per the schedule, Date of Counting was 11th December, 2018.

AND WHEREAS, as per Section 78 of the Representation of the People Act, 1917, every contesting candidate has to lodge a true copy of his account of election expenses within 30 days with the District Election Officer, from the date of election of returned candidate;

AND WHEREAS, the result of the said election was declared by the concerned Returning Officer including 47-Dharsiwa Constituency on 11th December, 2018. As such the last date for lodging of account of election expenses was 10th January, 2019.

AND WHEREAS, as per the report dated 11th January, 2019 submitted by the District Election Officer, Raipur District, Chhattisgarh and forwarded by Chief Electoral Officer, Chhattisgarh vide letter No. 21/चार/वि.स.चु./ई.ई.एम./2019/85, dated 29th January, 2019, Sh. Puran Lal Baghel, an Independent contesting candidate from 47-Dharsiwa Assembly Constituency of Chhattisgarh, has failed to lodge any account of his election expenses in the manner as required by law.

AND WHEREAS, on the basis of the reports of the District Election Officer, Raipur District, Chhattisgarh and the Chief Electoral Officer, Chhattisgarh, a show Cause Notice, dated 10th February, 2020 was issued by Election Commission of India under Sub Rule (5) of Rule 89 of the Conduct of Election Rules, 1961 to Sh. Puran Lal Baghel for non-submission of Election expenses;

AND WHEREAS, as per Sub Rule (6) of Rule 89 of the Conduct of Election Rules, 1961, through the above said Show Cause Notice, dated 10th February, 2020, Sh. Puran Lal Baghel, was directed to submit his representation in writing in the Commission explaining the reason for non-submission of accounts and also to lodge his accounts of election expenses/rectify the defects in his accounts and submit the same the District Election Officer concerned within 20 days from the date of receipt of the notice;

AND WHEREAS, the said notice was received by Sh. Puran Lal Baghel, on 20th February, 2020 Acknowledgment receipt obtained from the candidate have been submitted to the Commission by District Election Officer, Raipur vide his letter No. 7364/निर्वा./नि.प./2020 dated 27th February, 2020.

AND WHEREAS, in the supplementary report submitted by District Election Officer, Raipur vide his letter No. 847/नस्ती क्रमांक 184/निर्वा./नि.प./2022 dated 09th March, 2022, has stated that Sh. Puran Lal Baghel, has not submitted any representation or his account of election expenses till date. Further, he has furnished neither any reason nor explanation for the said failure even after receipt of the due notice to the Election Commission of India as well;

AND WHEREAS, the Commission satisfied that Sh. Puran Lal Baghel, has failed to lodge an account of election expenses and has no good reason or justification for the failure;

AND WHEREAS, Section 10A of the Representation of the people Act, 1951 Stipulates that :—

“If the Election Commission is satisfied that a person:

- (a) Has failed to lodge an account of election expenses within the time and in the manner required by law or under this Act, and
- (b) Has no good reason or justification for the failure,

Election Commission shall by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from date of the under;

NOW THEREFORE, in pursuance of Section 10A of the Representation of the People Act, 1917, the Election Commission of India hereby declares Sh. Puran Lal Baghel, Gram-Raita, P.O.-Manohara, Pin-493116, Chhattisgarh and an Independent contesting candidate for General Election to Legislative Assembly of Chhattisgarh, 2018 from 47-Dharsiwa Assembly Constituency of the state of Chhattisgarh to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Parliamentary or Legislative Council of a State or Union Territory for a period of three years from the date of this order.

By order,

Sd/-  
(NARENDRA N. BUTOLIA)  
Senior Principal Secretary,  
Election Commission of India.

## उच्च न्यायालय के आदेश और अधिसूचनाएं

HIGH COURT OF CHHATTISGARH, BILASPUR

Bilaspur, the 6th May 2022

No. 875/Confdl./2022/II-2-90/2001 (Part-IV).—(A) Shri Sudhir Kumar, Member of Higher Judicial Service and presently posted as Registrar (Vigilance), High Court of Chhattisgarh, Bilaspur is hereby, assigned additional charge of the post of Registrar (I. & E.), in addition to his own duties, until further orders.

(B) Shri Balram Prasad Verma, Member of Higher Judicial Service and presently posted as Registrar (Selection and Appointment) is hereby, assigned additional charge of the Mediation matters, in addition to his own duties, until further orders.

(C) Shri Shakti Singh Rajput, Member of Higher Judicial Service and presently posted as Officer-on-Special Duty-cum-Central Project Co-ordinator, E-Courts Mission Mode Project is hereby, appointed as Registrar (Computerisation)-cum-Central Project Co-ordinator, E-Courts Mission Mode Project in the Establishment of the High Court of Chhattisgarh from the date he assumes charge of his office.

Bilaspur, the 13th May 2022

No. 886/Confdl./2022/II-3-1/2022.—The following candidates as mentioned in Column No. (2), appointed on probation as Civil Judge (Entry Level) in the Cadre of Chhattisgarh Lower Judicial Service by the State Government, are posted in the capacity as mentioned against their names in Column No. (3) of the table below with a direction to join their place of posting on or before 30-05-2022 :—

TABLE

Sl. No. (1)	Name (2)	Posted As (3)
1.	Smt. Kewara Rajput W/o Shri Nitin Thakur	I Civil Judge Class-II, Durg
2.	Ku. Shubhangi Jain D/o Shri Swatantra Kumar Jain	IV Civil Judge Class-II, Durg
3.	Shri Nilesh Kumar Baghel S/o Shri Angaj Prajapati	VII Civil Judge Class-II, Durg

Bilaspur, the 13th May 2022

No. 895/Confdl./2022/II-2-1/2022.—The incumbent Judicial Officer of the Court, as specified in Column No. (2) of the table below, are, hereby, given additional charge of the Court as mentioned in Column No. (3), in addition to their own duties until further orders :—

TABLE

S. No. (1)	Name of the Court (2)	Additional Charge (3)
1.	Additional District & Sessions Judge, Jashpur	Additional District & Sessions Judge (F.T.C.), Jashpur.
2.	V Additional District & Sessions Judge, Raigarh	Labour Judge, Labour Court, Raigarh
3.	II Additional District & Sessions Judge, Janjgir	Labour Judge, Labour Court, Janjgir
4.	I Additional district & Sessions Judge, Manendragarh.	Labour Judge, Labour Court, Manendragarh.

By order of the High Court,  
ARVIND KUMAR VERMA, Registrar General.